QUESTIONS AND ANSWERS

THE SACRAMENTS

by

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LONDON
BURNS OATES & WASHBOURNE LTD
PUBLISHERS TO THE HOLY SKB
1947

NIHIL OBSTAT

Georgius Can. Smith, S.Th.D., Ph.D.

Censor deputatus

IMPRIMATUR

E. Morrogh Bernard

Vic. Gen.

WESTMONASTERII,

Die 29 *Octobris* 1945

First edition 1946

Second impression 1947

THIS BOOK, PRODUCED IN COMPLIANCE WITH THE AUTHORED ECONOMY STANDARDS, IS PRINTED IN GREAT BRITAIN. AT THE ANCHOR PRESS, TIPTREE, Essex

FOREWORD

This book consists of classified and corrected material which was first published in *The Clergy Review* from 1931 to 1944. Whether it be that subscribers esteem their copies too highly to part with them, or that they considered them, on the contrary, not worth preserving, past numbers are now difficult to obtain. It is thought, accordingly, that the clergy and others might find it convenient to have in one volume a selection from "Questions and Answers" dealing with the sacraments.

Since the "Table of Contents" is so detailed, an alphabetical Jndcx is unnecess^ry, and an Index to the canons of the Code has been compiled instead.

My thanks are due to the proprietors and to the editor of the *Review,* not only for permitting, but for urging me to republish material which many may think unworthy of resurrection.

E. J. Mahoney

Poles, Ware, Heris.
5, January, 1944.

ABBREVIATIONS

y1.y1.5. = *Acta Apostolicae Sedis.* Commentarium Officiale. (Romae, Typis Polyglottis Vaticanis.)

Addit, et Variat. = The section at the beginning of the current *Missale Romanam* entitled "Additiones et Variationes in Rubricis Missalis".

Apollinaris = *Apollinaris,* Commentarium luris Canonici. (Romae, Pontificium Institutum Utriusquc luris, Piazza S. Apollinare, 49.)

Bouscaren, *Digest — The Canon Law Digest.* Officially Published Documents Affecting the Code of Canon Law. Vol. I (1934); Vol. II (1957.) By T. Lincoln Bouscaren, S.J. (Bruce Publishing Company, Milwaukee, U.S.A.)

Caerem. Epp. = *Caerentoniale Episcoporum,* Clementis VIII, Innoccntii X et Benedicti XIII Jussu Editum, Benedicti XIV et Leonis XIII Auctoritate Recognitum. (Marictti, 1935.)

Clementine Instruction = *Instructio Clementina* pro Expositione SSmi Sacramenti Occasione XL Horarum (1731). It is printed with annotations in Vol. IV of *Decreta Authentica* S.R.C. English translation by Rev. J. O'Connell. (Burns Oates and Washbourne, 1927.)

Code — *Codex luris Canonici,* Pii X Pontificis Maximi lussu Digestus, Benedicti Papae XV Auctoritate Promulgatus. (Romae, Typis Polyglottis Vaticanis, 1918.)

Code Commission — Pontificia Commissio ad Codicis Canones Authentice Interpretandos.

De Defectibus = The section at the beginning of the current *Missale Romanum* entitled "De Defectibus in Celebratione Missarum Occurrentibus".

Denz. = Enchiridion Symbolorum Definitionum et Declarationum De Rebus Fidei et Morum. Auctore Henrico Dcnzingcr. (Herder.)

E.T.E. = *Ephemerides Theologicae Eovanienses.* (18 Rue des Récollcts, Louvain.)

N.K.L. = *Nederlandsche Kafholieke Stemmen* (Zwolle, J. M. W. Waanders.)

Fontes = *Codicis luris Canonici Fontes.* Vols. I–VIII. (Romae, Typis Polyglottis Vaticanis, 1926-1939.)

Jus Pontificiam = *Jus Pontificiam* seu Ephemerides Romanae ad Canonicas Disciplinas Spectantes. (Romae, Via Monteselva 3.)

Ordo Administrandi = *Ordo Administrandi Sacramenta* et Alia Quaedam Officia Peragendi ex Rituali Romano Extractus Nonnullis Adicctis ex Antiquo Rituali Anglicano. (Burns Oates and Washbourne, 1915.)

Periodica — Periodica de Rf *Morali Canonica Eitnrgica* Fundata ab Arthuro Vermcersch, S.J., Edita a Professoribus Pontificiae Universitatis Gregorianae. (Romae, Universitas Gregoriana.)

Preces et Pia Opera = *Preces et Pia Opera* in Favorem Omnium Christifidelium vel Quorundam Coetuum Personarum Indulgentiis Ditata et Opportune Recognita. (Romae, Typis Polyglottis Vaticanis, 1938.) There is an English translation (Burns Oates and Washbournc) of the previous 1929 edition, entitled *The Raccolta.* The translation of current 1938 edition, also entitled *The Raccolta,* is published by Benzigcr, New York.

Propaganda = Sacra Congregatio de Propaganda Fide.

R//. *Celebr. Miss.* = The section at the beginning of the current *Missale Romanum,* entitled "Ritus Servandus in Celebratione Missae".

Ri*lHalt Romanum* = *Rituale Romanum* Pauli V Pontificis Maximi Jussu Editum Aliorumquc Pontificum Cura Recognitum atque Auctoritate D.N.Pii Papac XI ad Normam Codicis Juris Canonici Accomodatum. (Romae, Desclcc, 1935.)

Ritus Servandus = *Ritus Servandus* in Solemni Expositione et Benedictione Sanctissimi Sacramenti. (Burns Oates and Washbourne, 1938.)

Rubricae Generales = The section at the beginning of the current *Missale Romanum,* entitled "Rubricae Generales Missalis".

S.C. Cone. = Sacra Congregatio Concilii.

S.C. Consist. = Sacra Congregatio Consistorialis.

S.C. Indulg. = Sacra Congregatio Indulgentiis Sacrisque Reliquiis Praeposita.

S.C. Relig. = Sacra Congregatio de Religiosis.

S.C. Sacram. = Sacra Congregatio de Disciplina Sacramentorum.

J. *Off.* = Suprema Sacra Congregatio Sancti Officii.

ɟ *Poenit.* = Sacra Pocnitentiaria Apostolica.

S.R.C. = Sacra Congregatio Sacrorum Rituum. The numeral refers to the *Decreta Authentica* of the Congregation, Vols. I-VL (Romae, Typis Polyglottis Vaticanis, 1898-1927.)

SyHoge = *Sylloge* Praecipuorum Documentorum Recentium Summorum Pontificum et S. Congregationis de Propaganda Fide nccnon Aliarum SS. Congregationum Romanarum. Ad Usum Missionariorum. (Romae, Typis Polyglottis Vaticanis, 1939.)

Tbcol. Moralis = Manual of Moral Theology variously entitled *Compendium, Institutiones, Summula,* or *Manuale.*

VFestm. = *Decreta Quatuor Conciliorum Provincialium IP'estmonastenensium* 1852-1873. (Burns and Oates, n.d.) English translation entitled: *The Synods in English.* By Rev. Robert E. Guy, O.S.B. (Stratford-on-Avon, 1886.)

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I. BAPTISM

May one add ordinary water repeatedly to that in the font when the latter is getting low ?

Canon 757, §2: Si aqua benedicta in baptisterio adeo sit imminuta, ut minus videatur sufficere, alia non benedicta admisceatur, etiam iterato, minore tamen copia.

Each time it is desired to use the font, water may be added so as to make the quantity sufficient for Baptism, provided that what is added is less in quantity than that already in the font. If the latter is so low that it is impossible to obtain sufficient water, except by adding a greater quantity than what is already in the font, fresh water should be blessed with the rite provided for the purpose in the *Rituale Romanian,* Tit. ii, cap. viii, or in our *Ordo Administrandi,* Tit. ii, cap. vi.

It is evident that if water is repeatedly added the amount will eventually exceed the original quantity of blessed water. Most of the commentators do not advert to this difficulty; some permit two or three additions;[1] others say it may be done several times; Dunne concludes that the addition may be repeated as often as necessary, even though the total is eventually greater than the amount of baptismal water originally in the font,[2] and we think that this is correct.

***If** there is time, is there a grave obligation to use baptismal water and to perform the subsequent ceremonies, when baptising at borne a child who is dangerously ill ?*

Canon 759 and *Rituale Romanum,* Tit. ii, cap. i, n. 28: In mortis periculo . . . a sacerdote vel diacono, serventur quoque, si tempus adsit, caeremoniae quae baptismum sequuntur.

J'.R.C., 23 January, 1914, η. 4310; *Fontes,* η. 6395: An in administratione baptismi, quando imminet periculum mortis, post infusionem aquae, urgeat sub gravi Ritualis Romani praescriptum quoad unctionem Chrismatis, traditionem linteoli et cerei? *Resp.* Standum est Rituali Romano.

The obligation to perform the subsequent ceremonies immediately, deferring those which precede until they can be performed in the church, is plain enough from the above texts. We are not aware of any explicit direction to use, on such occasions, baptismal water; but it seems to us rules, even though the rite is not strictly solemn Baptism—*omnibus ritibus servatis,* canon 737, §2—and, therefore, is not strictly within the terms of

canon 757, §1, which requires baptismal water for solemn Baptism. That baptismal water should be used is the teaching of Clacys-Bouuacrt, *Jus Canonicum,* II, §41; Callcwacrt in *Collationes Brugenses,* 1932, p. 453; Dunne, *The Ritual Explained,* p. 25 ; Lchmkuhl, *Tbeol. Moralis,* II, §60, and most of the older writers. It is also prescribed as a matter of course by some local synods in recalling the obligation of canon 759, e.g. *Middlesbrough Decrees,* 1933. n· 96·

It is implied, perhaps, in the reply *S.R.C.,* n. 4510, that the performance of the subsequent ceremonies is *per se* a grave obligation; the same cannot be said with equal confidence of the use of baptismal water on these occasions. In any case, the obligation is qualified by the words "si tempus sit", and the priest himself must be the judge whether, on being summoned to administer Baptism, it is wise to spend time assembling the various requirements for the complete observance of the above rules.

2.—I Christen Thee

Theologians usually teach that the form of Baptism, to be valid, must contain some word expressing ablution as the equivalent of the Latin "baptizo". It would, therefore, appear that " I christen" would be invalid, and that Catholics should not speak of a christening but of a Baptism.

The principle is that any word which, in the vernacular, is synonymous with "baptize" is valid. De Smet in *De Sacramentis,* p. 184, §1, cites the Flemish *kerstenen* and the English *christen* as examples of valid alternative words, and he notes that in 1894 the Holy Sec approved a Slavonic Ritual with *kristiti* in the vernacular form.

The pre-Reformation use in England seems to have been: "I Christen thee, etc.", and this certainly continued for some time after the Reformation. A *Ritual* printed at Douay by Laurence Kellam in 1610, was evidently meant for the use of the Seminary priests returning to England; it is entitled "Manuale Sacerdotum . . . insignis Ecclesiae Sarisburensis". The only English form on page 63 is: "I Christen thee ℵ in the name of the Father, and of the Sonne, and of the Holy Ghost. Amen" vel in lingua Latina sic: "Ego baptizo te 'N' in nomine, etc." It will be noticed that the form contains "Amen", which is lacking in the modern rituals.

To be lawful the form in our present Ritual: "I baptize thee, etc.", must always be used, but there cannot be any doubt that "I christen thee, etc.", is valid.

3.—Vernacular at Solemn Baptism

If for the convenience of the godparent the interrogations are made in English, is it permissible to omit the Latin form of the questions ? The case of the wedding service, where the interrogations are made in English only, might be adduced as an argument to support the omission of the Latin baptismal interrogations—at least in England. If the questions must first be asked in Latin, then in English, it would seem that the responses should also be in Latin and English. But would it be correct for the priest who baptises to make these (Latin) responses ?

S.R.C., 5 March, 1904; *Periodica,* III, p. 287: An adhiberi possit idioma .vernaculum in administratione baptismi? *Resp.* Affirmative quoad questiones et responsa patrini vel matrinac, si eadem a parocho prius sermone latino recitentur.

Quite apart from the directions of our liturgical text in the rite of marriage, there is this difference to be remembered: the consent in marriage is the sacrament and is therefore properly given, not in Latin, but in a language which the parties and the witnesses certainly understand. The marriage rite varies considerably in different countries; nor is it particularly ancient, since the assistance of a priest was not absolutely necessary before *Tametsi* of the Council of Trent. The baptismal rite, on the contrary, is extremely ancient, particularly the opening questions, and the Church has often declined to modify it in any way.

Apart Jrom the interrogations, is it necessary for the Creed and the Lord's Prayer to be said first in Latin then in English—particularly as in most cases it is necessary for the priest to lead the English recitation oj these prayers ?

5.R.C., 30 Dec., 1881, n. 3535.10: Num patrini in Baptismo recitare possint *Pater* et *Credo* lingua vernacula, dum Parochus ea recitat latino sermone? *Resp.* Posse. The decision assumes that these formulae shall be said in Latin by the priest, but permits the vernacular to be used by the sponsors. A common practice is for the priest to start each in a loud voice in the vernacular, having invited the sponsors to recite them, and to continue himself the Latin formula in a lower voice.

Is one permitted to recite after each prayer in the baptisma, rite an English translation, as is already directed to be done for certain of the forms used?

It is not only permitted but desirable for the priest to explain, either before the rite or afterwards, the Latin prayers used in the administration of the sacraments. But in the rite itself the vernacular may be used only when it is sanctioned by the *Ordo Administrandi.*

For about half a century, at least, the local rituals used in this country permitted an English version of all the baptismal prayers to be recited after each Latin form. This is found in *Ordo Baptizandi Attaque Sacramenta Administrandi,* Dublin, 1774, and in a book with the same title, Paris, 1738. It is not found in a London edition of 1686, nor in a London edition of 1788. Therefore, the practice was sanctioned throughout the middle of the eighteenth century, but we have no information why it was discontinued. Those in favour of more vernacular in the liturgy have, it would seem, a good argument from this practice of our forefathers. It meant exactly doubling the length of the rite, for the rubrics required, of course, that the Latin should be recited as well as the English: "Licet omnia prout supra, vulgari lingua reddita, in gratiam adstantium, subnecti possint: praescriptus tamen latine baptizandi ritus servandus est."

In the above replies we have not touched on the question whether the use of the vernacular in liturgical rites is desirable or not; we have merely stated the law as it exists at the moment of writing.

4.—Baptismal Ceremonies

Neither the "Rituale Romanum" nor our "Ordo Administrandi" state the exact time of entry into the baptistery. Is it more correct to make the interrogations "N. Credis in Deum, etc", within the gates of the baptistery?

It is true that the *Ordo Administrandi,* which is based on the official text of the *Rituale Romanum* then current, does not make it quite clear. The commentators solved the doubt by quoting the very explicit directions contained in *Memoriale Rituum,* Tit. vi, cap. ii, §5, namely the priest pronouncesthe exorcisms standing with his back to the entrance of the baptistery; in the same place he puts on the white stole, enters the baptistery and, standing before the font, puts the questions *N. Credis in Deum,* etc.

These rubrics are now included in the latest (1925) typical edition of the *Rituale Romanum'.* "12. Ac deinde, antequam accedat ad Baptisterium, versis renibus ostio cancellorum Baptisterii, dicit *Exorcizo te,* etc. 17. Stans ibidem extra cancellos, deponit stolam violaceam, et sumit stolam albi coloris. Tunc ingreditur Baptisterium, in quod intrat etiam patrinus cum infante. Sacerdos ad fontem interrogat, etc."

A query has arisen in observing the law of supplying the omitted ceremonies. The growth of hair on the head of an adult makes it difficult to anoint the crown of the head', should it be done in such cases on the forehead?

Rituale Romanum, Tit. ii, cap. v, n. 21: Sacerdos intingit pollicem in sacro Chrismate, et ungit infantem (quem patrinus vel matrina, vel uterque simul tenet) in summitate capitis in modum crucis dicens (singulariter singulis): *Deus omnipotens,* etc.

Although we have not been able to find any writer dealing expressly with this point, a solution of the doubt may be found by examining the analogous situation in pouring the baptismal water on the hairy head of a candidate. The Ritual does not, indeed, specify on what part of the head the water is to be poured, and everyone admits some element of doubt if it flows merely over the hair without anywhere touching the skin. But the bracketed instruction in *Ordo Administrandi,* Tit. ii, cap. i, n. 10, is more explicit: "Abluenda est pars capitis superior. Sedulo curandum est ut pellem capitis aqua *immediate* tangat. Quod si capillatus fuerit qui baptizandus occurrit, densius capillamentum discriminet Sacerdos sinistrae manus digitis cum aquam dextra infundit." Hence two methods arc suggested: the water may be poured on the crown of the head in such wise that it flows also on the forehead; or the pouring may begin on the forehead and continue on to the crown of the head.

Similarly, though the matter is not of the same gravity, it would seem that the anointing of a hairy candidate should be performed by making a large sign of the cross so as to include, if the hair cannot be parted, the forehead or the sides of the head.

Whilst anointing the breast and shoulders with the Oil of Catechumens the priest is directed to say theformula: "Ego te linio etc." But the "Ordo Administrandi" (1915)

only indicates one cross—after "linio". At what point in the formula does the priest anoint the shoulders, i.e. "inter scapulas" ?

Apart from the rule that this anointing formula is only recited once for both unctions, the rubrics do not settle the point raised. Rubricians make various suggestions. A modern writer of authority directs that both anointings should be completed at the place marked with the cross: "Expletis interrogationibus, intingit pollicem dextrum in Oleo Catechumenorum et infantem ungit; proferens formulam: *Ego te linio* ✠ ungit infantem in pectore in modum Crucis, dein inter scapulas pariter in modum crucis et dicit: *oleo salutis,* etc."[1] The author most commonly used by us in England and who faithfully records our customs is Fr. Dunne. He writes: "While making the downward stroke on the breast he says *Ego te linio* and while completing the cross, *oleo sahitis*; while making the downward stroke between the shoulders, he says *in Christo Jesu Domino nostro,* and while completing the cross, *ut habeas vitam aeternam."*[2]

5.—Supplying Baptismal Ceremonies

What should be done at the conditional Baptism of reputed Catholic children if it is doubtful whether the ceremonies have been performed ?

Canon 760: Cum baptismus sub conditione iteratur, caeremoniae, si quidem in priore baptismo omissae fuerunt, suppleantur, salvo praescripto can. 759, §3; sin autem in priore baptismo adhibitae sunt, repeti in altero ant omitti possunt.

The case could never arise in the conditional Baptism of children formerly baptized by non-Catholic ministers; whatever doubt there may be about the validity of the former Baptism, it is certain that the ceremonies—even though attempted—were invalid. The doubt is restricted, therefore, to cases of reputed Catholics who are to be re-baptized conditionally owing to some doubt having arisen about their former Baptism, c.g. no record or witnesses of its performance can be traced. We are aware that, when a case of this kind arises, it is the more common practice to administer conditional Baptism without any of the ceremonies. But it seems to us a necessary deduction from the terms of canons 759 and 760 that, in the ccmmon law, the conditional Baptism in these cases should be "solemn", i.e. accompanied by all the ceremonies. The Church sets such value on these ceremonies that canon 760 states they may be repeated at a conditional Baptism, even when it is certain that they took place at the former doubtful Baptism, c.g. when the doubt is whether the water touched the '-andidate. Cf. Dunne, *The Ritual Explained,* p. 24.

6.—Ceremonies at Conditional Baptism

In an orphanage children are often received of whose Baptism no proof can be obtained, and if is the custom in such cases to administer conditional Baptism privately, i.e. without the ceremonies in the Ritual. In this practice correct ?

[1] Morutti» *Caeremoniale* BZ, p. 177.
[1] *The Ritual Explained* p. 20.

Canon 759, §2: Extra mords periculum baptismum privatum loci Ordinarius permittere nequit, nisi agatur de haereticis qui in adulta aetate sub conditione baptizentur.

§3. Caeremoniae autem quae in baptismi collatione praetermissae quavis radone fuerint, quamprimum in ecclesia suppleantur, nisi in casu de quo in §2.

Canon 760: Cum baptismus sub conditione iteratur, caeremoniae, si quidem in priore baptismo omissae fuerunt, suppleantur, salvo praescripto can. 759, §3; sin autem in priore baptismo adhibitae sunt, repeti in altero aut omitti possunt.

Several points of difficulty converge on cases of this kind. There is, for example, the question of securing in children who have reached the age of reason the knowledge and intention proportioned to their years. Nor should Baptism be repeated, even conditionally, unless after an inquiry the doubt persists: in some cases the law itself resolves the doubt, e.g. canons 746 and 747 decide about fetal baptism: canon 749 directs foundlings to be baptized conditionally when investigation about the fact of Baptism is unsuccessful. Each case must be decided individually on its own merits, but the Holy See accepts for Baptisms in England the cautious doctrine of Lacroix: "Si quibusdam locis . . . nec sollicite observent ea quae catholica Ecclesia requirit ad valorem Sacramenti, debere, a talibus baptizatos, sub conditione rebaptizari."[1]

Assuming the lawfulness of administering conditional Baptism, the general principle about the accompanying ceremonies of the Ritual is that persons have a right to them, as being valuable spiritual benefits, and therefore they may not be withheld except only in the case of the conditional baptism of adult heretics.

(i) For children who have not reached the age ot reason the correct procedure is quite certain: their conditional Baptism must be accompanied by all the ceremonies prescribed in the Ritual for the Baptism of infants. This is clearly deduced from canon 760, compared with canon 88, and it is to be presumed *(praesumptio iuris non ds iure,* canons 1825-1828) that the age of reason is seven years completed. It must be observed that "private" Baptism is not synonymous with "secret" Baptism or with its administration "at home"; it is styled "private" when unaccompanied by the ceremonies, as defined in canon 737, §2, and from canon 759, §1, it is evident that the essential ceremonies in question are those which precede the baptismal formula. An ordinary may permit "solemn" Baptism in a private house for the reasons mentioned in canon 776, but the common law does not permit, except in danger of death, "private" conditional Baptism of infants either in a house or in a church. Accordingly, the infants of this orphanage should be taken to the church and baptized conditionally with all the ceremonies of the Ritual, unless the Ordinary permits these rites to be performed in the orphanage. There is a decree of the *Holy Office,* 2 April, 1879,[2] which directs Baptisms of this kind to be administered *secretly,* and Dunne[3] quotes another of 3 June, 1908, in the same sense. But seeing that the Code is silent about the secrecy which used to be required, wc agree with Gougnard[4] that it is no longer the common law.

[1] *Fontes,* η. 4748, *ad finem.*
[1] *Fontes,* η. ιοόι.
[3] *The Rifuil Explained,* p. 25.
[1] *Collationes Theologicae,* 1956» p. 8).

(ii) For children who have reached the age of reason the correct pronately for all adults; that is to say, the Ordinary may permit or direct the conditional Baptism of children over seven to be "private" *if they are heretics,* i.c. born of heretical parents, or regarded in the external forum as belonging to an heretical sect. In the case, however, of Catholic children over seven whose Baptism is considered doubtful, the conditional Baptism should be "solemn"; Dunne states that there is no decree directing this to be done, but it seems to us to be a necessary conclusion from the terms of canons 759 and 760, which are contained in the rubrics of the *BJtuale Romanum,* cap. i, n. 28, and cap. iii, η. 12.[1]

(iii) In this country the "private" conditional baptism of adult heretics is the law of *I Westm.,* Dec. XVI, n. 8, and not merely permissive as in the common law of canon 759, §2: "Huiusmodi baptismus non fiat publice sed omnino privatim, cum aqua lustrali, et absque caeremoniis." It is also evident in this law that "omnino privatim" means "secreto", as in *Lancaster Statuta,* 1935, n. 87, and in *Middlesbrough Decrees,* 1933, n. too.

(iv) What should be done with regard to persons who have been wrongly denied the ceremonies at their conditional Baptism? The question is met by J. *Off.,* 2 April, 1879, ad 3: ". . . quid faciendum de permultis huiusmodi qui fere passim iam per multos annos in pueritia sub conditione sine caeremoniis iam baptizati sunt? R«/>. Dissimulandum; quod si quis pctat, remittitur prudenti arbitrio R.P.D. Ordinarii."[2]

IFTw/ *are the reasons underlying the law that the ceremonies and prayers preceding Baptism must be supplied, since Baptism has already been administered? Is the baptised infant still, so to speak, in the possession of the unclean spirit? Why should the child be asked, through its sponsors, if it wishes to be baptised? Why do the sponsors not contract spiritual relationship ?*

Rituale Romanum, Tit. ii, cap. v, Ordo Supplendi Omissa: . . . ut idoneus sit frui gratia baptismi tui, quem suscepit, salis percepta medicina . . . ut discedas ab hoc plasmate Dei N., quod Dominus noster ad templum sanctum suum vocare dignatus est, ut fieret templum Dei vivi. . . .

(i) The obligation of supplying the omitted ceremonies is formulated both in the Ritual and in canon 759, §3, and is usually considered a grave one. By comparing the "Ordo Supplendi Omissa" in cap. v with the full rite in cap. ii, it will be seen that many of the phrases are slightly altered to meet the situation when the ceremonial rites alone are being administered to a child already baptized. Some of these are noted in the full rite contained in our *Ordo Administrandi,* which is based on an earlier recension

to accompany the preceding words instead of being related to the words

[1] Occasionally writers reckon as infants, for the purpose of baptism, children who have not reached the ape of puberty, e.g. *Dictionnaire de Droit Canonique,* Fasc. VII, col. 153 *ad finem·,* we think this must be due to inadvertence or to confusing the question of ceremonies with that of absolution from censure

[2] *Fontes,* n. 1096.

"ut discedas". Many Rituals are in circulation and our correspondent may have one which contains the vivid anachronism "Vis baptizari ?"; all those we have consulted omit these words, and our *Ordo Administrandi* contains a footnote to that effect.

(ii) One explanation for the retention in substance of all the preceding ceremonies may be that we have here, as it were, a dramatic representation which, by a kind of ritual fiction, imagines the child to be unbaptized for the purpose of receiving blessings which normally precede Baptism. It is somewhat on these lines that many writers explain the cxequial absolution prayers of the *Libera:* the dead person is, in fact, already judged by God, but the prayers dramatically imply that he is awaiting judgement.

This explanation is unsatisfactory, since the Church has provided a formula which definitely assumes that the child is already baptized. If the Church desired to eliminate the force of the exorcisms, it could have been effected by introducing the word "dudum" in the appropriate places, as has been done in the second prayer of the "Ordo Supplendi Omissa" before the words "rudimenta fidei".

It is equally unsatisfactory to argue that there is nothing manifestly inappropriate in exorcizing a baptised person, since the exorcisms of the Pontifical may be applied to such. To suppose that every candidate for Baptism is possessed by the devil, whatever meaning we give to this notion in the Pontifical, is a gross exaggeration. Cf. *Ephemerides Liti/rgicae,* 1928, p. 155, and the series of articles in that year explaining the baptismal ceremonies.

The correct explanation, it would seem, is that given by St. Thomas in III, 71, 3, ad 3: " . . . dispositio sufficiens ad suscipiendam gratiam baptismalcm est fides et intentio, vel propria cius qui baptizatur, si sit adultus, vel ipsius Ecclesiae, si sit parvulus. Ea vero quae aguntur in exorcismo ordinantur ad removendum impedimenta; et ideo sine eo potest aliquis consequi effectum baptismi: non tamen sunt huiusmodi praetermittenda, nisi in necessitatis articulo: et tunc cessante periculo debent suppleri, ut servetur uniformitas in baptismo. Nec frustra supplentur post baptismum, quia sicut impeditur effectus baptismi antequam percipiatur; ita potest impediri postquam fuerit perceptus." As we all unhappily know, we remain liable to the external influence of evil spirits even after Baptism, and the internal inclination to sin also remains; these are impediments to the use of grace of our Baptism, and the effect intended by the Church in the exorcisms and other baptismal rites is to remove them.

(iii) The notion of spiritual paternity in the sponsor is necessarily attached to baptismal regeneration, the effect of which is distinct from the effect of the accompanying rites conveniently described as sacramentals. Accordingly, as stated in canon 762, §2, the sponsor who intervenes at the ceremonies alone—styled in some Rituals *sponsor catechesis*—contracts no spiritual relationship.

8.—Changed Christian Name

An adult convert, James Brown, desires to take the Christian name John at Baptism. The parish priest, fearing subsequent confusion as to the man's identity, enters bis name as James in the baptismal register. Is this correct?

The common law of the Church, so far as we can discover, does not provide for this contingency. The baptismal register is a public document (canon 1813), and the obligation of inscribing it correctly (canon 777) has appropriate sanctions (canon 2406, §1). The latter canon provides, amongst other things, against falsifying entries therein (falsare, adulterare, destruere vel occultare).

In the civil law a person may change his name as often as he sees fit, provided it is not done for illegal purposes. But in so doing he runs the risk of confusing his identity, thus endangering his rights to property and other things, and to avoid this risk the proper course is to execute a deed and have it enrolled at the Central Office of the Supreme Court of Judicature, or to publicize the change by announcement in the *London Gazette* and in the newspapers.

In order to avoid needless conflict between civil and ecclesiastical registers, the best course is for the adult convert to retain at Baptism the Christian name which was entered in the civil register at the time of his birth. But there may be good reasons for a change; for example, the name may have profane or anti-Christian associations, and therefore be contrary to the law of canon 761. In this case we think that the original name should also be inscribed in the register, together with the Christian name, in order to avoid subsequent confusion. This procedure is of obligation in some dioceses as in Malines: "Quod si baptizandus infans sub profano aliquo nomine in registris status civilis inscriptus iam fuerit, nomen alicuius e Coelitibus ci imponatur. Nomen tamen profanum simul cum alio vel aliis in libro baptismal! notetur, ne ex nominum diversitate postea dubium oriatur de infantis identitate".1 If this course is followed, every subsequent extract from the register should indicate both names, e.g. "Joannes (/>; *registro civili* Jacobus) Brown". Alternatively, the person could be advised to adopt the procedure for changing his name as already indicated, but in our view a double entry in the baptismal register suffices in the circumstances.

§2. RECIPIENT OF BAPTISM

9.—Procedure in Baptizing Children

Is it possible to set out simply and clearly the correct procedure and rules for receiving young children of various ages into the Church, and for baptising them conditionally ?

The following chart docs not include Baptisms in danger of death, nor the supplying of ceremonies omitted on such occasions. We believe it is correct, but there arc some aspects of these cases which are unchartable.

In compiling the chart we have kept in mind, in addition to the common law, the directions of the Westminster Provincial Councils and the rubrics of the *Ordo Administrandi* which are of obligation throughout this country.

1 *Statuta,* 1924, n. 243.

We have not taken into account local diocesan legislation, which may determine doubtful points such as those mentioned in Notes *4* and 9; this is of obligation in those dioceses alone.

	Ordinary's Intervention Necessary ? (î)	*Disposition, f Required in the Subject ?* 6)	*Censure Incurred i?* (6)	*Ceremonies to be Employed?* (7)	*Sponsor Required?* (8)	*Convert Form to be Used?*
A. ABSOLUTE:						
Up to 7 (1)	No (4)	No	No	Yes	Yes	No
7 onwards (a)	Yes	Yes	No	Yes	Yes	No (9)
B. CONDITIONAL:						
Catholics up to 7	No	No	No	Yes, if formerly omitted; otherwise optional	Permissible	No
Non-Catholics up to 7	No (4)	No	No	Yes	No	No
Catholics 7 onwards	No	Yes	No	Yes, if formerly omitted; otherwise optional	Permissible	No
Non-Catholics 7 to X4 or 11 (2)	Yes	Yes	No	No	No	Yes, *minus* absolution from censure (9)
Non-Catholics 14 or x2 onwards	Ye»	Yes	Yes	No	No	Yes

Explanatory Notes

(1) Canon 745, §2. A candidate is an adult when he has reached the age of reason, which, from canon 88, §5, is presumed to be the age ol seven years completed, a presumption, however, which yields to proof of the contrary. Cf. canons 1825-1828.

(2) A censure cannot be incurred by an unbaptized person. Therefore, in the case of absolute Baptism it is irrelevant whether the candidate has reached the age of puberty or not. A baptized person does not incur censure before this age. From canon 88, §2, the age of puberty is presumed to be 14 for males and 12 for females. In our view one may follow the probable opinion which, for the purpose of censures, regards the age as 14 for both sexes, unless local law directs that the rule of canon 88, §2, must be strictly followed. Cf. Q. 205.

(5) The absolute Baptism of adults must be referred to the Ordinary in principle from canon 744. The conditional Baptism of adult reputed

heretics needs the Ordinary's intervention in so far as it accompanies reconciliation with the Church. This is the common law from canon 2314, §2, when the censure has been incurred. Moreover, the English bishops in 1902 reserved the reconciliation of all converts to themselves. Cf. *Westminster Synod,* XLI, 1902, Appendix II.

(4) Cf. canon 751. The infant children of non-Catholic parents are lawfully baptized, whether absolutely or conditionally, provided a guarantee is obtained from the parents or other responsible persons that they will be educated as Catholics, and no reference to the Ordinary is necessary in the common law. Doubtful cases should be referred to him.

(5) By "dispositions" we mean: intention, instruction and attrition, as in canon 752. For the absolute Baptism of adults, minister and subject should be fasting (decet); Mass with Holy Communion should normally follow from canon 753.

(6) The canonical conditions for incurring censure may often be lacking, but it is normally presumed to have been incurred by all heretics who have reached the age or puberty. We have in the above chart considered only the censure attached to heresy, etc., in canon 2314. Other censures which the candidate may have incurred will usually be absolved in the internal forum of Penance. Cf. canon 2251.

(7) The order of Baptism is either "Ordo Parvulorum" *{Ordo Administrandi,* Tit. ii, capp. ii and iii) or "De Baptismo Adultorum" *{Rj/nak Romanum,* Tit. ii, cap. iii). Almost universally in this country Ordinaries permit the "Ordo Parvulorum" for adults from canon 755, §2.

The law about the ceremonies is in canon 760. Cf. Q. 6. Conditional Baptism without ceremonies is not only permissible for adult non-Cathnlics from canon 759, §3, but obligatory in this country from *1 Westm.,* Dec., XVI, n. 8. It is to be done secretly and with holy water.

In all other cases of conditional Baptism, i.e. all infants whether Catholics or not, and all adult Catholics, the ceremonies if formerly omitted must be supplied from canon 760; otherwise they arc optional. The rite is to be performed in a church unless the Ordinary permits otherwise. Cf. canons 773» 776·

The necessity for conditional Baptism of those already baptized with the Catholic rite will seldom arise.

(8) Canon 763, §1: "Cum baptismus iteratur sub conditione, idem patrin s, quatenus fieri potest, adhibeatur, qui in priore baptismo forte adfuit; extra hunc casum in baptismo conditionato patrinus non est necessarius." Therefore a sponsor is not employed at the conditional Baptism of children under seven, whose previous doubtful Baptism was administered by a non-Catholic minister.

(9) Cf. Dunne, *The Rifttai Explained,* p. 39, and *Ordo Administrandi,* Tit. iii, cap. iv, n. 6. There is no definite ruling, but it appears more in accordance with the common law to omit the "Forma Reconciliandi Conversum" when administering absolute Baptism to an adult convert; where it is customary, as Fr. Dunne says, to employ the convert form, both the absolution from censure and the sacramental absolution are omitted. The case is different when baptizing conditionally an adult reputed heretic who has not reached the age of puberty; the "Forma Reconciliandi Conversum" provides a liturgical rite for the occasion and it should be employed *minus* the absolution from censure.

10.—Intention of Receiving Baptism

In reconciling to the Church a family with a number of small children, some difficulty arose regarding a child who was not quite seven years old, namely whether it could be validly baptised without previous instruction. As a matter of fact, some elementary instruction was given, but the child, on being brought to the font, resisted strenuously and was most unwilling to be baptised. M'as the sacrament validly received?

We may put aside everything pertaining to the fruitful reception of Baptism and examine the only relevant point affecting its valid reception, namely the degree of intention necessary on the part of a subject who has attained the use of reason.

That an habitual intention suffices is universally taught. Moreover, it is commonly held that an implied habitual intention is sufficient, e.g. the desire for Baptism contained within the desire to become a Christian, though the person may be entirely ignorant of the nature of Baptism. Since, however, the sufficiency of this implied intention is questioned by some, the common teaching is that one should not be content with it, outside the danger of death,[1] but that an *explicit* intention should be secured. Thus, canon 752, §2: "In mortis autem periculo, si nequeat in praecipuis fidei mysteriis diligentius instrui, satis est, ad baptismum conferendum, ut aliquo modo ostendat se eisdem assentire serioque promittat se christianae religionis mandata servaturum. §3. Quod si baptismum ne petere quidem queat, sed vel antea vel in praesenti manifestaverit aliquo probabili modo intentionem illum suscipiendi, baptizandus est sub conditione; si deinde convaluerit et dubium de valore baptismi collati permaneat, sub conditione baptismus rursus conferatur."

The point in the above case is to decide whether the child has attained the use of reason. If it has the use of reason, it is subject, as an adult, to the law which reouires an intention of receiving Baptism. Canon 745, §2: "Cum agitur de baptismo: 1. Parvulorum seu infantium nomine veniunt, ad normam can. 88, §3, qui nondum rationis usum adepti sunt, eisdemque acccnsentur amentes ab infantia, in quavis aetate constituti. 2. Adulti autem censentur, qui rationis usu fruuntur; idque satis est ut suo quisque animi motu baptismum petat et ad illum admittatur." It is clear that, for the purpose of receiving Baptism, an adult is one who enjoys the use of reason, and that the age limit determined in canon 88, §3, indicates merely a *praesumptiojuris,* not a *praesumptiojuris et dejure.*[2] The rule of canon 88, §3, that an infant is one who has not reached the age of seven years completed, is a legal presumption which must nevertheless yield to the truth, whenever it is established that the use of reason is enjoyed before that age. If, in a given case, a child under the age of seven is proved to possess the use of reason, it cannot validly be baptized without an intention, in proportion to its years, of receiving the sacrament.

In the case submitted it appears that the sacrament was validly received. If the child had actually attained the use of reason, it could form an in-

[1] Prümmer, *Tbtol. Moralis,* III, §135; De Smet, *De Sacramentis,* §273.
[2] Cf. Canons 1823 and 1826.

tention from the elementary instruction given before Baptism; the resistance at the font could be due to sudden fright and in no sense to a revocation of the intention formed. On the other hand, if no benefit was received from the elementary instruction, it argues that the child had not attained the use of reason and could validly be baptized as an infant. But, in all such border-line cases, outside the danger of death, it is far better to delay Baptism in order that the minimum for its valid reception may be assured.

11.—Baptism and Use of Reason

An indifferent Catholic father and Protestant mother have four children who have been baptised in the Church of England. The ages of the children are 3, 5, 61 *and 9 years. Through the efforts of the priest, the three children of school age have entered the Catholic school to be brought up Catholics, with the consent of the parents. They are all receiving religious instructions, and the two eldest are being prepared to make their first confession and Holy Communion when they are ready. Should all three children of school age be conditionally baptised at once, or should this ceremony be deferred until the time of first confession and Communion ?*

Canon 745, §2: Cum agitur de Baptismo: 1. Parvulorum seu infantium nomine veniunt, ad normam can. 88, qui nondum rationis usum adepti sunt, eisdemque acccnsentur amentes ab infantia, in quavis aetate constituti. 2. Adulti autem censentur, qui rationis usu fruuntur; idque satis est ut suo quisque motu baptismum peut et ad illum admittatur.

Canon 752, §1: Adultus, nisi sciens et volens probeque instructus, re baptizetur; insuper admonendus ut de peccatis suis dolcat.

It is clear that the meaning of "adult", in this connexion, is not to be extended to other laws. From canon 88, §3, a child before the age of seven is presumed not to have the use of reason; after that age it is presumed to have it. The presumption is what is called *praesumptio suris,* namely it must yield to the truth in a given case.[1] It is quite likely, for example, that the presumption of having the use of reason is not actually realized in a child of 7I, and the presumption of not having it is not realized in a child of 6j.

Accordingly, the two youngest children (5 and 5) arc infants, and should be baptized conditionally without any delay; canon 770: "Infantes quam-primum baptizentur; et parochi ac concionatores frequenter fideles de hac gravi obligatione commoneant." The Baptism of the child of 9, if it is of normal intelligence, should be delayed until it is sufficiently instructed. There is required an intention for receiving the sacrament validly; for receiving it fruitfully, attrition and elementary knowledge of the truths necessary for salvation arc required. As a practical solution, we think that Baptism should be deferred till the time when the child is ready for first confession and Communion. The case of the child of 61 offers some little difficulty, which has already been discussed in Q. 10.

The minimum instruction which should precede the baptism of adults is usefully summarized by *Propaganda,* 18 October, 1885, ad xvii: . excepto mortis corum periculo, haec pro oculis a missionariis habeantur, nempe ut catechumeni cognoscant principalia myteria fidei, Symbolum,

1 Cf. Canons 1825 and 1826.

Orationem Dominicam, decalogum, praecepta Ecclesiae, effectum Baptismi, actus virtutum theologorum carumque motiva".[1] This instruction includes everything usually set out by the authors as *necessitate medii* and *necessitate precepti.* Obviously, "cognoscant" in this text must be understood in conjunction with the subject's capabilities which, in the case of a young child, would be very small.

12.—Baptism of Embryo

As far as my experience goes, Catholics generally presume embryo délit eries dead and tbty are burnt or disposed of without Baptism. I should be surprised to learn that medicals and nurses did otherwise. I know oj no specific leaflet on the subject, suitable for distribution generally. As the matter would appear to be grave, urgent and offrequent occurrence, and so little seems to be done in authoritative declarations or instruction in seminaries, what method do you suggest to make the necessity and method of Baptism known to the general public ?

Canon 745: Curet parochus ut fideles, praesertim obstetrices, medici cr chirurgi, rectum baptizandi modum pro casu necessitatis probe ediscant.

Canon 747: Curandum ut omnes fetus abortivi, quovis tempore editi,, si certo vivant, baptizentur absolute; si dubie, sub conditione.

Canon 748: Monstra et ostenta semper baptizentur saltem sub conditione; in dubio autem unusne an plures sint homines, unus absolute baptizetur, ceteri sub conditione.

We know of no specific leaflet dealing with the above question. It will be found, we think, that the subject is always explained in the seminary course in the moral treatise on Baptism. The parish priest will observe the terms of canon 743 either by informing nurses and others of their obligation, particularly if his parish contains hospitals or maternity clinics, or by referring them to such associations as the *Catholic Nurses' Guild* or the *Guild of SS. Luke, Cosmas and Damien.*

The fullest theological treatment about signs of life in the embryo is in Merkelbach, *Questiones de Lmbryologia,* p. 70 seq. Though interesting, it is not strictly necessary for the due observance of the law; Baptism should always be administered conditionally unless it is absolutely certain that life is wholly extinct.

13.—Conditional Adult Baptism

Positive doubt exists concerning the Baptism oj a youth, bom 0/ Catholic parents, educated a Catholic and always reputed as such. Is it necessary to refer the case to the Ordinary before re-baptrfing him conditionally l

Canon 744: Adultorum baptismus, ubi commode fieri potest, ad loci Ordinarium deferatur, ut, si voluerit, ab eo vel ab eius delegato sollemnius conferatur.

This canon is a good example of a direction of the Code which seems to require some further specification by local law. Even in the case of absolute Baptism it is so mildly expressed that some hesitate to call it a law: "Verba ista ita temperate sunt posita ut, potius quam praeceptum, continere videantur votum quod ipse Ordinarius complere potest statuto quo baptismum adultorum sibi reservet."[1] Still less, therefore, is there an obligation from the common law of this canon to refer cases of adult conditional Baptism to the Ordinary, and those commentators who advert to the point rightly teach that the canon does not include such cases. Thus Vermeersch-Creusen, *loc. cit.*\ Claeys-Bouuaert, *Jus Canonicum,* §25; Ayrinhac, *Legislation on the Sacraments,* p. 21. If a priest cannot come to a decision about the lawfulness of conditional Baptism he should consult the Ordinary, but this is not the purpose of the direction in canon 744: it is to give the opportunity to the Ordinary, if he so desires, of baptizing adults with greater solemnity, a circumstance which clearly does not accompany such cases as the above.

In some places local law requires a reference to the Ordinary even for the conditional Baptism of adults. Thus, *Malines Statuta,* 1924, n. 249, and *Lancaster Statuta,* 1935, n. 85. Throughout England and Wales, the Ordinary's consent is required for the conditional Baptism of converts, which normally accompanies their reception into the Church, even though they have not, perhaps, incurred the censure of canon 2314, §1.

14.—Baptizing a Dying Non-Catholic

A priest is called to the bedside of a dying non-Catholic. He finds that the person is a Christian in good dispositions, has a knowledge of the truths necessary for salvation, and a desire to do everything that is required to save his soul, but has no desire to be reconciled with the Church and is in good faith. There is no time to have recourse to the Ordinary. Is if permissible, assuming bis first Baptism to be doubtfully valid, to baptise him again conditionally ?

Canon 752, §1: Adultus, nisi sciens et volens probeque instructus, ne baptizetur. . . .

§2. In mortis autem periculo, si nequeat in praecipuis fidei mysteriis diligentius instrui, satis est, ad baptismum conferendum, ut aliquo modo ostendat se eisdem assentire serioque promittat se Christianae religionis mandata servaturum.

§3. Quod si baptismum ne petere quidem queat, sed vel antea vel in praesenti statu manifestaverit aliquo probabili modo intentionem illum suscipiendi, baptizandus est sub conditione. . . .

The canon has in mind the absolute Baptism of infidels; without actually solving the controversy concerning the sufficiency of an implied intention, it provides a practical rule by distinguishing between ordinary circumstances and the danger of death; and, further, by distinguishing in §§2 and 5 between those dying people who are and those who are not destitute of senses.

The directions apply all the more easily to conditional Baptism in the above case, since it cannot be doubted that the dying person amply possesses the qualifications for valid Baptism. Of these qualifications the most important is the intention to receive the sacrament. If, therefore, the per-

[1] *Fonus.* n. 490j.

[1] Vcrmccrsch-Crcuscn, *Epitome,* II, §28.

son is destitute of senses, and there is no means of exploring his wishes, he may be baptized conditionally. He has, at least, an habitual intention, and there is no reason to suppose that he would resist the minister's good offices.

If, on the other hand, he is capable of giving some slight attention to the subject—*aliquo modo* as stated in canon 752, §2—in our view his consent should first be obtained. It is true that, as a Christian, he enjoys an habitual intention with respect to Baptism, but an adult not destitute of senses must, at least, not be averse to receiving conditional Baptism. Most non-Catholics would strongly object to it, in which case this actual contrary intention would negative the habitual intention which it is presumed they have got. There is no necessity, in these circumstances, to raise the question of reconciliation with the Church, seeing that the person is in good faith and time is lacking for the ordinary procedure to be observed.

The point is not raised in the above question, but it may be noted that, in similar circumstances, the conditional administration of the sacraments of Penance and Extreme Unction is also permitted *secluso scandalo,* provided it is judged that the dying person has the minimum intention. The fullest discussion of the matter is in *Periodica,* 1929, pp. 125-148.

Parents dwelling in other parishes frequently bring children to be baptised in my parish, since the church can be more conveniently reached. Is it quite in order for me to baptise them without the express permission of their own parish priests ?

Canon 758, §1: Minister Ordinarius baptismi solemnis est sacerdos; sed eius collatio reservatur parocho vel alii sacerdoti de eiusdem parochi vel Ordinarii licentia, quae in casu necessitatis legitime praesumitur.

§2. Etiam peregrinus a parocho proprio in sua paroecia sollemniter baptizetur, si id facile et sine mora fieri potest; secus peregrinum quilibet parochus in suo territorio potest sollemniter baptizare.

Canon 774, §1: Quaelibet parochialis ecclesia, revocato ac reprobato ?[uovis contrario statuto vel privilegio vel consuetudine, baptismalem habeat ontem, salvo legitimo iure cumulativo aliis ecclesiis iam quaesito.

- §2. Loci Ordinarius potest pro fidelium commoditate permittere vel iuberc ut fons baptismalis ponatur etiam in alia ecclesia vel publico oratorio inter paroeciae fines.

(i) *Parochus proprius,* in this connexion, is the priest in whose parish the parents of the candidate have a domicile or quasi-domicile.[1] By the common law solemn Baptism is reserved to this priest, and his right is violated by any other priest who administers the sacrament without proper authorization. To this law, as to most positive laws, there arc exceptions. Local law or legitimate custom may sanction a departure from the common Law Fanfani records that in Rome itself there is an ancient custom of taking infants to be baptized at St. Peter's.[2] Canon 774 provides for an exception in favour of churches, other than the parish church, which have acquired

1 Cf. Canon 94.
• *De litre Parochorum,* §244.

a cumulative right to a font. Blat defines this as a right whereby people may be baptized lawfully in that place, as well as in the parish church. A reply of the *Code Commission,* 12 November, 1922, declared that such cumulative right cannot, in future, be acquired by custom: a church which, before the Code, had an exclusive right to a font, now possesses merely a cumulative right, according to the prescriptions of canon 774.1

(ii) The exception which is most likely to operate in this country is mentioned in canon 758, namely a case of necessity when the permission of the parish priest is to be presumed. The necessity in question is clearly not the extreme kind, arising in danger of death, when any lay person may baptize privately, or any priest may baptize with the subsequent ceremonies, as canon 759 determines. It is *necessitas communis,* and examples of it suggested by the authors arc: the case of people coming from a long distance and finding that the parish priest is absent, or the fear that Baptism will be neglected unless it is administered at once. In the circumstances in which we are living, which are largely those of a missionary country, a priest should never refuse to baptize the subject of another parish priest, in our view, since the law is not clearly known by the people, and there is a much wider principle than that of canon 738 to be kept always in mind, namely the principle that the sacraments are not to be refused to those who seek them reasonably. But the faithful should be informed of their obligations in this respect; it is not that a parish priest is unduly jealous of his legal rights, but that as pastor of souls he is responsible for the Baptism of infants within his territory.

16.—Baptismal Vows

At the close of missions the faithful are generally urged to renew their baptismal vows. If this act is a vow, in the usual meaning of the word, it would appear that all subsequent sins also violate the virtue of religion; if it is not a vow, why call it such?

Canon 1507, §1: Votum, id est promissio deliberata ac libera Deo facta be bono possibili et meliore, ex virtute religionis impleri debet.

St. Thomas, Dist. XXXVIII, q. 1, a. 2 (Parma, IV, p. 1006): Illud autem votum quod habet aliquid necessitatis, habet incomplete rationem voti . . . et hoc est votum commune, quod est de his ad quae omnes tenentur ...

Ad tertium dicendum quod transgressio voti communis non facit speciale peccatum, sed addit peccato specialem deformitatem: magis enim peccat baptizatus eodem genere peccati quam non baptizatus. ... Et ideo non frustra emittitur, cum aliquam obligationem addat, sicut lex scripta addit aliquam obligationem supra legem naturae; et ita non facit aliud peccatum, sed novam deformitatem addit.

The question raised about baptismal "vows" could be applied also to the marriage "vows", for they are not vows in the strict sense of the word as defined in canon 1307, §1. One of the ways of discerning whether a person has made a vow properly so called is to discover whether he had a deliberate intention of binding himself under pain of sin; and if the object matter is already of obligation under pain of sin, there can be no vow properly so called unless the person deliberately intends to add to this obligation by

1 *A.A.S.,* XIV, 1922, p. 662.

binding himself through the virtue of religion, in such manner that its non-observance will be of the nature of sacrilege. It is possible, though not in our view desirable, for the renewal of baptismal "vows" to be vows in the strict sense of the word. Usually this renewal is not meant or intended to be anything more than a solemn resolution to avoid sin.

But they can be called vows in a wide sense of the word, since by Baptism the soul is dedicated to God's service, and, as St. Thomas observes, following St. Paul's teaching in Hebrews x, 29, the sins of a baptized person have thereby an additional deformity. Similarly, it would appear, since the marriages of Christians are a symbol of Christ's union with the Church, their infidelities have a deformity which is lacking in the marriages of the unbaptized, and the obligations assumed with the marriage contract may rightly be called vows, though not in the strict sense of the word. Cf. Prümmcr: *'Yheol. Moralis,* II, §401, f.: . . . . "votum in baptismo emissum renuntiandi Satanae, mundo et pompis eius . . . non est votum in stricto, sed in lato sensu, ita ut baptizatus peccans contra promissiones datas gravius quidem peccat quam homo non baptizatus, sed tamen verum sacrilegium non committit ob laesionem voti in baptismate. Ita sententia communis. Ratio est, quia ille, qui in baptismo tales promissiones dat, non intendit se obligare sub peccato speciali contra religionem, sed solummodo promittit fidelem observantiam omnium mandatorum Dei."

§3. CONVERTS

17.—Baptism and Parental Consent

&rl a&d thirteen, being educated with Catholics in a convent school, urgently desires to be received into the Church—she is not baptised—but the father will not consent. Is it permitted to baptise her in spite of this ?

Canon 745, §2.2: Adulti autem censentur, qui rationis usu fruuntur; idque satis est ut suo quisque motu baptismum petat et ad illum admittatur.

In itself, the lawful reception of Baptism on the part of one who has reached the age of reason does not require the consent of parents. It is a matter gravely affecting personal salvation, and a human being with the use of reason needs the consent of no one in order to obey the divine law. Similarly, in principle, the minister is bound to baptize a person who seeks this sacrament with proper knowledge and dispositions. "Filii infidelium vel haereticorum, si adultam aetatem sint adepti, i.c. rationis usum habeant, possunt, absque parentum iniuria, baptizari, non obstante dictorum parentum reluctantia."[1]

But, owing to accidental circumstances and contingencies, an act which is *per se* lawful may rightly be delayed. Some writers, as Gcnicot, hold that if there is no danger of death, to delay Baptism is not gravely sinful, unless it is done out of contempt? What length of time constitutes a grave neglect cannot be determined from the divine law, and the Church, it appears, is not competent to determine the matter since she has no jurisdiction over

1 De Smet, *De Sacramentis,* §297.
* *Tbeol. Morales,* II, §149; St. Thomas, *SupplemesU,* 6, j.

unbaptized persons. Many manualists hold that it is a grave breach of the divine law to delay Baptism until there is danger of death, since Christ wishes all men to belong to the visible Church during their span of human life.[1] It is agreed amongst all the writers that it cannot be determined how soon a person, who has decided to be baptized, is bound *sub gravi* to receive the sacrament.

Not only may Baptism be delayed without grave sin, but without any sin at all, if circumstances justify the delay; and it may actually be virtuous, because prudent, to defer the time of reception. Considerations which would point to such a decision are the subsequent danger of perversion in a child who is baptized in spite of its parents' wishes, and the possibility of grave harm falling on the Church through such a practice, which may be against the civil law. These are the considerations contained in a reply of the *Holy Office,* 21 July, 1880: "An tuto admitti possit ad fidei catholicae professionem puella decem annorum in monasterio degens, eiusdem patre haeretico invito. *Resp.* Curet prius Vicarius Ap. totis viribus consensum patris puellae obtinere: si consensus non obtineatur, perpendat serio incommoda quae ex talis puellae admissione in Ecclesiam provenire praevideantur tum quoad periculum proximum perversionis eiusdem puellae, tum quoad grave damnum scholae ac missionis catholicae; et quatenus nulla, aut spernanda incommoda praevideantur, eamdem admittat sine mora: quatenus vero gravia praevideantur incommoda futura, eiusdem admissionem ad formalem et publicam professionem fidei catholicae differat, nisi periculum mortis immineat; et interim curet eam hortari ut in bono proposito perserveret, atque Deum precetur ut obstacula omnia auferre dignetur; simulque curet ut ipsa in monasterio manere pergat, et tali modo suam educationem catholicam compleat et perficiat."[2]

18.—Ordinary for Reception of Converts

A priest wishes to receive into the Church a person whom be has instructed who lives in a diocese other than his own, and to receive him in that diocese. When applying for the necessary faculty must be write direct to the Ordinary (or the vicargeneral}, or must bis application go through the parisb-priest-to-be of the convert? And if the former, bas any reference to be made to the parish priest before the reception takes place?

(i) The reconciliation of a convert is not a parochial right but is a matter for the Ordinary of the place where the convert is received. This is apparent from the common law in such canons as 2314, §2, and from the unanimous decision of the English bishops in 1902: ". . . idcirco ab Episcopis unanimis, in recenti suo annuo Provinciae Westmonasteriensis Conventu, decisum est ut convertendorum Ecclesiae reconciliationem unusquisque Episcopus in propria sua Dioecesi sibi reservaret".[3] Therefore it is open to any priest, even though he does not belong to the Ordinary's diocese, to apply for the faculty himself without any reference to the future parish priest of the convert.

[1] Cf. Noldin, *T'heol. Moratis,* II, §73, ad 2.
[2] *Fantes,* η. xo66.
[3] *Westminster Synod,* XLI, 1902, Appendix II

(ii) Since the matter is wholly within the Ordinary's discretion, it will be found that local regulations determine its details: for example, the Ordinary may require the convert's fitness to be attested by a parish priest, or he may prohibit the reception ceremony to take place anywhere except in a parish church. In such cases, as is evident, the intervention of the parish priest will be a necessary preliminary. Otherwise it will only be necessary to inform the parish priest of the place, in order that the details may be inscribed in the parochial register. In practice there should be no difficulty. When the extern priest applies to the Ordinary for a faculty he will be informed of the local law.

19.—Reception of Converts: Sub-delegation

May a priest who has received a faculty for the reception of a convert ask another priest to receive the convert for him ?

Absolution from censure in the external forum is an act of external jurisdiction. Moreover, abstracting altogether from the fact that a given convert has not perhaps incurred the censure, the faculty of receiving him publicly into the Church is reserved to the jurisdiction of the bishops since the Low Week meeting of 1902.

As an act of jurisdiction, which the priest is delegated by the Ordinary to perform, it cannot be sub-delegated by the priest, since his power is not *ad universitatem negotiorum·,* canon 199, §3: "Potestas delegata ad universitatem negotiorum ab eo qui infra Romanum Pontificem habet ordinariam potestatem, potest in singulis casibus sub-delegari. §4. In aliis casibus potestas jurisdictionis delegata sub-delegari potest tantummodo ex concessione expresse facta. . . ."

As an absolution from censure in the external forum, the principle of canon 199 is applied in canon 2253: "Extra mortis periculum potest absolvere . . . 3. A censura *a sure reservata,* ille qui censuram constituit vel cui reservata est, eorumque successores aut competentes Superiores aut delegati."

Apart, therefore, from the danger of death, when anyone may reconcile a convert, the priest who receives a faculty from his Ordinary cannot sub-delegate another priest, unless permission to do so is granted to him by the Ordinary.

20.—Reception of Converts: Censure

The formula to be used in receiving a convert into the Church contains an absolution, in the external forum, from the censure of excommunication. If we apply the canonical rules with regard to censures it would appear that the majority of converts, if not all of them, cannot have incurred the censure owing to their invincible ignorance. Of what value, then, is the absolution ?

(i) The implications in this question arc many and far-reaching. One of the effects of excommunication is to deprive die censured person of the

sacraments: if material heretics who are in good faith are not excommunicated, why are they refused the sacraments, except perhaps *in periculo mortis ?* Also, if they arc not excommunicated, why is it necessary to seek episcopal permission to reconcile them to the Church ? Provided they are validly baptized, are they not members of the Church already ? Here arc some views on the subject proposed.

(a) The liberal view is well expressed in a contribution by M. Antoine Malvy, *Recherches de Science Religieuse*, February 1927, reprinted in *Documentation Catholique,* XVIII, 1927, col. 550. It is maintained that baptized non-Catholics in good faith are members of the body of the Church precisely because they are not excommunicated. Amongst other conclusions it is held that canon 751, §2 is a positive law which admits of many exceptions, on a principle of *epikeia,* not only *in periculo mortis* but, perhaps, on other occasions: in any case the law must yield whenever it is in conflict with the divine law of Charity.

(/>) The view diametrically opposed to this is defined in *Jus Pontificium,* 1951, p. 52. The position defended is quite simple. It is that the definition of a heretic in canon 1325, §2, and the excommunication incurred by heretics in canon 2314, §1, apply to material as well as formal heretics, and, to this extent, we have an exception from the usual canonical rules concerning ignorance and imputability in the matter of incurring censures.

If a choice had to be made between these two views, there is no question that the second fits in best with Catholic discipline and, in particular, with our practice in reconciling converts. It provides the simplest possible answer to the question put above. But one feels a certain misgiving in applying the notion of censure to people who have done no wrong and committed no crime, for the notion of censure consists in penalty, medicinal punishment, for some wrong knowingly committed.

(r) It seems better, therefore, to adopt another explanation, not so simple as cither of these views just given, but probably nearer the truth. We may leave entirely out of the discussion the lawfulness of giving some sacraments, under certain conditions, to unreconciled heretics *in periculo mortis,* i.e. to those who have not expressly abjured their errors. 11 needlessly complicates the issue we are discussing ahd throws no light on the problem.

The solution which I think is the correct one consists in perceiving a distinction which the Code itself supplies. The sacraments are to be denied both to material and formal heretics but for different reasons: to formal heretics because they merit punishment, the censure of canon 2314, §1; to material heretics because they are excluded by canon 751, §2, which is not an ecclesiastical punishment, nor even merely an ecclesiastical law, but a necessary deduction from the concept of the Church: "Ecclesia est societas hominum . . . eiusdem Christianae fidei professione et eorundem sacramentorum communione adunatorum, ad aeternam salutem consequendam."[1] Those who reject the rule of faith proposed by the Church arc not members of the Church, and may not lawfully share in the privileges of members as, for example, the reception of the sacraments. This notion of membership of the Church is the one which is admirably explained by Cardinal Billot.[2]

(ii) To apply this to the procedure for reconciling converts:

1 Tanqucrcy, *Tbeol. Dogmat. Fundament.,* §940.
1 *De Feelesta,* Theses X and XI.

(a) It is difficult, in the first place, to say with certainty that a given convert has not incurred the censure. It is not amongst those which crass ignorance excuses and it is not unlikely that, during a given period previous to his submission, there was sufficient knowledge for incurring a censure. Therefore, absolution from censure is given, at least *ad cautelam.,* when receiving a convert into the Church. If there is doubt on the point, the rubric directs the priest to insert the word "forsan" before "incurristi".

(/>) Moreover, the important distinction between the internal and the external forum must always be remembered. The external government of the Church regards the external actions of people: *de internis non indicat praetor.* Hence the obvious principle of canon 16, §2: "Ignorantia vel error circa legem aut poenam . . . non praesumitur." It is open to the authority of the external forum to regard the members of heretical sects as excommunicated, even though, in the internal forum of conscience, they may be guiltless of any act meriting punishment. We say "it is open to them" to do so, but whether they do, as a matter of fact, must depend on their own avowal, explicit or implicit.

(r) Even though there is no express direction from the competent authority that converts from heretical sects are all reckoned to be excommunicated, the absolution from censure should, in my opinion, always be given. It is, at least, a liturgical law, with the authority of our English *Ordo Administrandi* supporting it. The formula in Tit. iii, cap 5, is substantially the rite drawn up by Bishop Hedley and published by the Catholic Truth Society, based on instructions of the *Holy Office.* It was incorporated into the *Ordo Administrandi* at the time of the revision of the book in 1915. In this text, rubric 2 takes it for granted that absolution from censure will be given to all who have reached the age of puberty. Nothing is said about omitting the absolution in cases where the censure is reckoned not to have been incurred; the only concession is the permission to insert the word "forsan" in cases of doubt, "in dubio gravi vel levi". There is no more reason for omitting this absolution, in cases where it is morally certain that no censure has been incurred, than for omitting the absolution from censures which occurs in the ordinary form of confessional absolution.

(J) Lastly, and the most important point of all, abstracting from all question of excommunication, the licence of the Ordinary is always necessary before reconciling a convert to the Church. "Episcopus in sua dioecesi est inquisitor natus haereticae pravitatis".1 He is, by nature as it were, the custodian of the faith of his flock, a prerogative abundantly evident in the rite of consecration, and reflected in canon 2314, §2, which is often puzzling to the casual reader; the censure attached to heresy is reserved to the Holy See, if absolution is sought in the internal forum; but in the external forum the bishop can deal with it "sua auctoritate ordinaria". Previous to 1902 it appears that it was the practice of the English bishops to give delegated faculties habitually to priests in the matter of reconciling heretics. Either because it was abused by priests receiving converts without sufficient instruction, or for some other reason, the faculty was withdrawn in 1902.

1 Ojctti, *Synopsis,* §2285.

21.—Reception of Converts: Abjuration

In the form Jor the Reconciliation oj a Convert in my edition, bearing the "Imprimatur" of Cardinal Vaughan, dated May 1902, *the profession offaith required of the convert is the Creed of Pius IV. The shorterformula beginning "I, N.N., having before my eyes the holy Gospels, etc.", is given as an alternative. On the other hand my "Ordo Administrandi"* (1915) *and the twopenny "Formfor the Reception oj a Convert", C.T.S.,* 1934, *give the latterformula only and make no mention ofan alternative. Couldyou say whether the use of the Creed of Pius IV is authorised in the reconciliation ofa convert in England? I ask this questionfor a verypractical reason; the opening paragraph of the shorterformula seems inapplicable to a large proportion ofconverts nowadays, and the shrewder among them are apt to notice it. It frequently happens, especially with the younger ones, that they have not "held and believed doctrines" opposed to the teaching of the Church', indeed, they have seldom "held and believed" anything in particular at all. Moreover, I must confess tofinding difficulty in explaining to them what "inasmuch as having been bom outside that Church" can mean. As an unusually perspicacious convert recently said to me: "Surely everybody who has not been baptised in utero' is bom outside the Church?" And what is theforce of the "inasmuch"? "Brought up" instead of "bom" would be understandable.*

This may seemfoolish quibbling; but, surely, it is desirablefor the convert, with bis bands on the gospel at such a solemn moment ofbis life, that theformula should be absolutely accurate and applicable to bis own case, without any explaining away or mental reservation?

The alternative oj the Creed oj Pius IV would solve the difficulty in many cases, besides providing a more logical and dignified profession offaith that is also more official. But it is undoubtedly unsuitablefor many of the simpler converts, and in this respect the shorterformula is certainly preferable.

We are of the opinion that the profession of faith, as contained in the "Forma Reconciliandi Conversum" in the English *Ordo Administrandi,* should always be used, and that the use of the alternative form, as contained in the earlier books, is now incorrect. This is supported by the general rubrics, nn. 2, 11 and 16, and also by the fact that in the rite itself there is no alternative form.

It is the form for the external forum and, as explained in canon 2314, §2, the local Ordinary is competent to deal with it "praevia abiuratione iuridice pcracta". Because it is a question of the external forum of ecclesiastical law, and not the internal forum of conscience, the priest is not free to form his own judgement about the convert's state. In the confessional, on the other hand, dealing with a penitent's lapse into heresy, it is open to him to judge that there is no censure, or even no sin, owing to the penitent's ignorance or good faith. But the external government of the church regards the external actions of people: *de internis non iudicat praetor.* The external authority has determined a particular form for receiving converts, and the whole of the rite assumes that the person is being absolved from the censure of excommunication. The word "forsan" may be added to the form, if desired.

In the case of an intelligent convert who is really worried about the external procedure, probably a simple explanation of the difference between

the external and internal forum would restore his confidence. It is clearly impossible to have a variety of liturgical texts to suit the needs of each convert. He may be told that, in the forum of conscience and in the eyes of God, he may be entirely free from any guilt in having, so far, been a non-Catholic; but he is required, as an act of humility and submission, publicly to abjure the errors which, in good faith, he has held.

With regard to the actual words of the profession of faith, there is nothing objectively untrue in the phrase "inasmuch as I have held and believed doctrines opposed to her teaching" when uttered by a person who formerly held and believed no doctrine whatever; for this condition of not believing anything is clearly opposed to Catholic doctrine. Implicitly, at least, the persuasion that one religion is as good as another, or that it is of no consequence whether one accepts any revealed truths are, in a sense, "doctrines opposed to her teaching". This is the force of "inasmuch".

"Having been born outside that Church" is a phrase which is certainly open to criticism, though its meaning is plain. In the Code the more accurate expression is found "ab acatholicis natus".

This profession of faith is the one which the *Holy Office* directed to be used, in the reconciliation of heretics, 20 July, 1859.[1] The document expressly notes that the profession of faith to be used differs from that of Pius IV. A modified form has been approved for the United States, as noted at the end of the reply to Q. 22, but we must use the one in our *Ordo Administrandi* unless a change is authorized.

At the conditional Baptism of an adult reputed heretic, who has not reached the age of puberty, the "abiuratio" made during the profession of faith is omitted; this was the decision of the *Holy Office,* 8 March, 1882;[2] it is also the direction given in our *Ordo Administrandi,* Tit. iii, cap. iv, nn. 2 and 6: "Abiuratio nisi sit impubes." The implication is that an abjuration of error, though contained within the profession of faith, is part of the purging of the "delictum", and is only explicitly required when this latter has, at least in the external forum, been committed. Accordingly, in the replies given in column three, Q. 9, the incurring of censure carries with it the necessity of making an abjuration of errors.

22.—Converts: Modified Abjuration

Could one reasonably request the Ordinary to dispense a convert from uttering the abjuration given in the "Forma reconciliandi conversum" ? The person feels that be is insulting his parents' memory in condemning, so strongly his former beliefs.

Canon 81: A generalibus Ecclesiae legibus Ordinarii infra Romanum Pontificem dispensare nequeunt, ne in casu quidem particulari . . . nisi difficilis sit recursus ad Sanctam Sedem et simul in mora sit periculum gravis damni, et de dispensatione agitur quae a Sede Apostolica concedi solet.

Canon 2314, §2: . . . Ordinarius, non vero Vicarius Generalis sine mandato speciali, resipiscentem, praevia abiurationc iuridicc peracta aliisque servatis de iure servandis, sua auctoritate ordinaria in foro exteriore absolvere potest . . .

[1] Fcw/r/, n. 955.
[2] *Ibid.,* n. 1075.

Ordo Administrandi, Tit. iii, cap. iv, n. z: Ab iis vero, qui illam aetatem (pubertatis) excesserunt, formalis sectae abiuratio ad quam pertinuerunt est exigenda (cf. Instr. S. R. U. Inquisit. 29 Nov., 1878, et Resp. 3 Junii, 1908).

S. Off., 28 March, 1900; *Fontes,* n. 1237: . . . Accedit quod valde consultum est ut haereticis conversis modus abiurandi facilis et commodus reddatur, et ut conversiones nullum strepitum vel admirationem excitent, quod fieret, si iudiciales aut iuridicae formae adhiberentur . . . Quae cum ita sint, Ep. "N", ut sensus citati decreti non ansam praebeat dubiis, a Sacra Inquisitione Congr. humillime petit, ut declaretur num possit Episcopus *ordinaria* sua facultate absolvendi haereticos etiam tunc uti, si non fiat abiuratio in stricto sensu *iuridica,* sed coram solo sacerdote ab Episcopo delegato, aut coram tali sacerdote et teste.

R. Respondendum Episcopo ad mentem: Mens est quod abiuratio fieri potest coram quopiam ab Episcopo delegato ut notario, et aliquibus personis uti testibus . . .

(i) From the above texts it is evident that the reconciliation of a person above the age of puberty, who has belonged to an heretical sect, necessarily includes some abjuration of the errors formerly held, even though in good faith. It is a general law of the Church which is not usually dispensed, and accordingly one could not, with any prospect of success, request an Ordinary to use the powers given to him from canon 81.

(ii) The words of abjuration are contained in our *Ordo Administrandi* and may not be modified on the authority of the priest delegated to receive the convert. But it seems to us that the Ordinary could be petitioned, in an exceptional case and for grave reasons, to sanction a modification of the terms of abjuration in the Ritual, provided always that the substance of the act is preserved. A suggested modification may be seen in *The Clergy Review,* XV, 1938, p. 221, and XVIII, 1940, p. 395, in the course of discussion on the subject by Fr. Bcvcnot, S.J.; also a newly approved formula for the United States, XXII, 1942, p. 472. It would not be an unreasonable request, since the mode of making the abjuration has varied in different times and places, and it is the desire of the Church to make it as easy as possible. But it is entirely a matter for the discretion of the Ordinary.

23.—Reception of Converts: Witnesses

When did the law requiring the presence of two witnesses at a convert's reception come into force? If this formality is not observed what is the status of the convert?

The rite of reconciling heretics is largely based on the supposition that they are being absolved from censure in the external forum, at least *ad cautelam* and for the due observance of the liturgical rite. A rejection or abjuration of previous heresy is a necessary part of the procedure. It is an act of a public nature and therefore subject to the law of the Church, but the exact formality to be observed has varied at different times; what has always remained constant is the legal requirement of some proof that the abjuration of heresy has taken place. The Pontifical contains an "Ordo ad reconciliandum" which supposes that the bishop is reconciling the convert personally, and it is because of this native power of the episcopate that canon 2514, §2, declares that the excommunication attached to heresy may be removed by

any bishop in the external forum. The bishop may delegate this power of his to some other priest, as is commonly done when a priest receives the faculty to reconcile a convert.

The common law now requires the presence of two witnesses at this act of abjuration. Previous regulations may be seen in Ojetti, *Synopsis* s.v. *abiuratio* and *baeresis.* An Instruction of 8 April, 1786, required it to be "coram paucis". A reply of the *Holy Office* was given to a German bishop, 28 March, 1900, who had pleaded a local custom of abjuration before the priest alone; it reasserted the law requiring witnesses: "Mens est quod abiuratio fieri potest coram quopiam ab Episcopo delegato ut notario, et aliquibus personis uti testibus."[1] Our *Ordo Administrandi,* Tit. iii, cap. 4, n. j, states: "Tam abiuratio haeresis quam neo-conversorum Baptismus conditionatus . . . semper fieri debent coram Notario vel Sacerdote ab Episcopo delegato nec non duobus saltem testibus." The chapter opens with a reference to an Instruction of the *Holy Office,* 20 June, 1859—an error of date for 20 July of that year.[2] This Instruction does not determine the juridical form of the abjuration, but a further Instruction for the English bishops, 20 January, 1900, is mentioned in the *Ordo Administrandi.* We cannot trace the text of this document; according to Dunne, it is to the effect that when the presence of witnesses cannot be secured without real difficulty, it is left to the discretion of the bishops in England to dispense from the common law and practice, provided that the abjuration takes place *inforo extemo,* and that it can afterwards be proved.[3] Accordingly, rubric 5 in the *Ordo Administrandi* continues: "nisi in casu particulari propter verum incommodum Episcopus ab hac lege recedere permittat". A declaration of the *HolyOffice,* 19 February, 1916,[4] states the law in almost exactly the same terms as are now found in canon 2314, §2: "Abiuratio vero habetur iuridice peracta cum fit coram ipso Ordinario vel eius delegato et saltem duobus testibus."

Unless, therefore, the bishop dispenses the common law, the abjuration must take place in the presence of two witnesses. If, through negligence, this formality is not observed, there is fault on the priest's part, but the convert's status as a reconciled person is not affected, in our view. There is nothing in the wording of the law which argues that witnesses arc necessary for the *validity* of the act. If we suppose, for the sake of argument, that the defect renders the absolution of the external forum invalid, the person at least receives absolution in the internal forum when he goes to confession, which will normally be immediately after the external forum absolution. This sacramental absolution is valid from canon 2247, §3, since the censure is not one of those reserved to the Holy See *specialissimo moder,* and from canon 2251, a person absolved in the internal forum may consider himself absolved *ceteris paribus* also in the external forum.

24.—Reception of Converts: Confession

In the case of a doubtfully baptised convert, about to be reconciled, is confession a strict obligation? Or may it be held with Cappello, "De Poenitentia" (1938), §51, *that the convert may to some extent be excused?*

[1] *Fontes,* n. 1257.
[2] *Ibid.,* n. 955. Eng. Tr. in Guy, *Sjnods in English,* p. x6z.
[3] *Tin Ritual Explained,* p. 54.
[4] *Fontes,* n. 1299.

1 Westm., Dec. XVI, n. 8: Confessio etiam sacramcntalis semper in tali casu (i.e. baptizandi sub conditione) exigenda est.

5. 0/Λ, 17 December, 1868: Λη debeat, iuxta Synodi Provincialis Decretum a S. Sede probatum, confessio Sacramcntalis a neo-convcrsis in Anglia exigi; et an ea debeat esse integra. *Resp.* Affirmative, et dandum esse decretum latum 17 Junii, 1715.

17 June, 1715: . . . esse rebaptizandum sub conditione; et collato Baptismo eius praeteritae vitae peccata confiteatur, et ab iis sub conditione absolvatur. (Both this and the previous reply are in ***IV*** *Westm.,* Appendix XVIII, p. 334.)

Propaganda, 12 July, 1869: Quoad dubium ab A.T. (Archiep. Quebec) propositum atque sacramentalcm confessionem attingens a neoconversis exigendam, observandum recurrit responsum elapsi anni, licet Episcopis Angliae tantummodo rogantibus datum, universalem legem continere, proindeque non solum in Anglia, sed in aliis etiam regionibus obligare. Hinc patet, quod nullatenus permitti potest ut praedictae decisioni contraria sententia doceatur. (The full text of query and reply is in *Ecclesiastical Review,* XXVIII, 1908, p. 511; other variations of it are given by the manualists.)

Cappello, *De Poenitentia,* §51 : *Ubi S. Sedes vel Episcopi jubent confessionem,* haec regulariter imponenda est neo-convcrsis; attamen cum haec lex probabiliter sit mere ecclesiastica, quoties vere probabile est priorem baptismum fuisse invalidum, urgenda est cum ea moderatione quae propria est legum positivarum. *In ceteris regionibus ubi non praecipitur* confessio valde consulenda est. . . .

(i) If the subject is considered apart from the positive law there is evidently room for much variety of opinion, particularly when the principles of probabilism are applied. Prc-baptismal sins arc not *necessary* matter for the sacrament of Penance, and therefore, if the convert's first Baptism is doubtful, his obligation to confess must equally be doubtful: the view that he is not strictly bound to confess his sins is a logical application of probabilist principles.

(ii) For people in this country, and in other places where the positive law insists on the necessity of confession, the question is purely academic, for there can be no doubt whatever that confession must always accompany the reception of a convert, and it will be observed that the above decisions of the Holy Sec are referred to in Tit. iii, cap. iv, n. 5, of our *Ordo Administrandi.* The reason is, firstly, that the convert may have a more complete assurance that his sins arc remitted. But the query of the English bishops, which elicited the reply in 1868, mentions a further reason: "attenta praesertim diligentia juniorum e Clero Anglicano circa ritum baptizandi fideliter servandum, et attento proinde majori numero eorum, de quorum baptismatis infantilis valore non licet dubitari".

, Cappello does not discuss this problem with his accustomed completeness. It is true we have here a positive law which must be interpreted in the manner of such, but given the repeated and express guidance of the Holy See, directions which have been introduced into our Ritual, it is difficult to imagine a reason which would justly excuse a convert from its observance, unless it be the kind of reason which excuses any penitent from making here and now an integral confession. If, for the sake of argument, a grave reason does exist, a dispensation from observing the

law could be sought from the Ordinary, but we doubt whether it would be granted.

(Hi) The reply given by Cardinal Barnabo in 1869 to the Ordinary of Quebec states that confession is obligatory throughout the whole Church, and that the contrary opinion may not be taught. It was promulgated only in Quebec, and some have even doubted its authenticity; moreover, it is stated on the authority of Bucceroni that the Cardinal Secretary of the *Holy Office* declared in 1897 that the decree given for England in 1868 was not general but given only for one locality, and the same view is accepted by Cardinal d'Annibale,1 himself an assessor of the *Holy Office* and a writer still held as an outstanding authority in Rome.

We agree that the law requiring a convert at his reception to confess the sins of his past life applies strictly only to England and other localities specifically named; for the rest of the Church the opinion given above under (i) may be followed. The whole subject, and the side issues arising from it, will appeal to those of an argumentative turn of mind, but we must be content to refer to some authors who give a more thorough examination than Cappello: De Smet, *De Sacramentis,* §306 seq.; Ojetti, *Synopsis,* III, §3163 seq.: *Ecclesiastical Review,* XXXVIII, 1908, p. 508.

§4. BAPTISMAL SPONSOR

25.—One Baptismal Sponsor

A priest holds the view that two sponsors are necessary, and if the parents provide only one he insists on pressing any available person into this office, notwithstanding the parents' objections. Is this practice correct? If not, is the additional sponsor valid?

Canon 764: Patrinus unus tantum, licet diversi sexus a baptizando, vel ad summum unus et una adhibeantur.

Canon 765: Ut quis sit patrinus, oportet: . . . . 4. Ab ipso baptizando eiusvc parentibus vel tutoribus aut, his deficientibus, a ministro sit designatus. . . .

The priest's practice is clearly unlawful from a comparison between these two canons. One not only suffices but is the sole valid sponsor unless the parents appoint a second, and the minister's right to select persons for the office does not arise unless the parents have failed to nominate.

The second one is valid provided the parents, notwithstanding their unwillingness, accept him or her as an additional sponsor in deference to the priest's wish. In many cases, we imagine, the parents would withhold their consent to the appointment, and regard the new-comer as merely a witness.

1 *Tbtol. Moralis,* HI, p. i6z.

26.—Catechumen as Sponsor

When about to perform the rite of solemn Baptism, the priest finds that the person acting as sponsor is under instruction but not yet received into the Church. May he be admitted as a valid sponsor?

Canon 762, §1: Ex vetustissimo Ecclesiae more nemo sollemniter baptizetur, nisi suum habeat, quatenus fieri potest, patrinum.

Canon 765: Ut quis sit patrinus, oportet: 1. Sit baptizatus. 2. Ad nullam pertineat haereticam aut schismaticam sectam.

Canon 1239, §2: Catechumeni qui nulla sua culpa sine baptismo moriantur, baptizatis acccnscndi sunt.

Some slight reason exists, perhaps, for supposing that a catechumen may act validly as sponsor, from the last canon cited, which, for the purposes of ecclesiastical burial, regards a catechumen as being equivalent to a baptized person—there is clearly baptism of desire in such cases.

But it seems to us quite certain, though we cannot find a post-code author who discusses the point, that the rule of canon 1239, §2, which is made for a definite contingency, cannot be regarded as a general principle. De Smet, writing just before the Code, and citing c. 102, Dist. IV *De Consecratione,* notes that the decree says nothing about the validity of the action; but he continues: "sub poena tamen nullitatis auctores passim exigunt caracterem baptismalem in susceptore, idque merito, cum absurdum censeatur patrem spiritualem esse illum qui spiritu nondum est natus". This teaching is quite explicit in canon 765, where all the conditions enumerated arc necessary for the validity of the act, and which is contrasted with the following canon 766 which determines the conditions required only for its lawfulness. Pre-Code law did not clearly distinguish the two things.

If it be urged that very likely the catechumen is already validly baptized, he is still incapable of being a valid sponsor from canon 765.2. Nor may it be said that he is no longer a member of an heretical sect, since he has renounced it by putting himself under instructions; for the law regards him as pertaining to the sect until he abjures and is absolved from the censure, at least *ad cautelam,* during the rite of reception into the Church.

In the circumstances, if no valid sponsor is obtainable, the rite should be performed without one, rather than run the risk of depriving the candidate of Baptism. The phrase "quatenus fieri potest" in canon 762, §1, implies that the presence of a sponsor at solemn Baptism is not a *conditio sine qua non.* Cf. also *Propaganda,* 1 April, 1816: "An, cum valde difficile hic sit invenire patrinos quales Ecclesia requirit, Baptismus licite conferatur sine patrinis. Rzj/>. Si patrini haberi non possunt, absque patrinis non necessariis necessarium Baptisma conferendum."[1]

27.—Unlawful Baptismal Sponsor

Titius, a priest, is administering Baptism. He notices as godmother a young woman who bas been living in sin for some time and bas not made ber Easter duty. He

[1] *Vontes,* n. 4701.

rtfuses to continue with the Baptism until another godmother isfound. Is beJustified in bis action ?

Canon 765: Ut quis sit patrinus, oportet: . . . 2. Ad nullam pertineat haereticam vel schismaticam sectam, nec sententia condemnatoria vel dcclaratoria sit cxcommunicatus aut infamis infamia iuris aut exclusus ab actibus legitimis. . . .

Canon 766: Ut autem quis licite patrinus admittatur, oportet . . . 2. Non sit propter notorium delictum cxcommunicatus vel exclusus ab actibus legitimis vel infamis infamia iuris, quin tamen sententia intercesserit, nec sit interdictus aut alias publice criminosus vel infamis infamia facti. . . .

"Living in sin" suggests that the proposed sponsor is either incapable, from canon 765, or unacceptable, from canon 766, for the office of sponsor. It will be necessary to determine the phrase "living in sin" more accurately.

Thus *infamia iuris* accompanies bigamy (canon 2356) and conviction of certain gross sexual crimes (canon 2557). *Exclusionfrom lawful acts,* amongst which is the office of sponsor, follows upon public adultery or concubinage (canon 2557, §2) and mixed marriage without a dispensation (canon 2375).

A person who is otherwise suitable, but who has not observed the Paschal precept, cannot for that neglect alone be rejected from the office of baptismal sponsor. It is, however, essential from canon 765.4 for the sponsor to be chosen by the parents or guardians of the child; a priest may lawfully use his influence to persuade the parents or guardians to choose a sponsor who has observed the precept.

Many teach that, on the score of avoiding scandal, it is lawful to reject a sponsor who has neglected the Paschal precept, or who has in some other way not specified in the law given grave offence.[1] In such cases it will be necessary to establish that the offence is publicly known, and that the guilty person cannot be admitted as sponsor without causing scandal.

Unless the priest can rely on the parties bringing the child at some other time, it is usually preferable to proceed with the Baptism lacking a sponsor than to run the risk of the child not being baptized.

28.—Baptismal Sponsor: Touching Child

Inasmuch as the law requires, for the validity of the act, that the sponsor should touch the child, it would be convenient to know the correct way ofperforming this act.

Canon 765: Ut quis sit patrinus oportet: . . . 5. Baptizandum in actu baptismi per se vel per procuratorem physice teneat aut tangat vel statim levet seu suscipiat de sacro fonte aut de minibus baptizantis.

Ordo Administrandi, Tit. i, cap. ii, nn.19 and 21 : Tunc Patrino, vel Matrina, vel utroque (si ambo admittantur) infantem tenente, Sacerdos vasculo, seu urceolo, accipit aquam baptismalem et de ea ter infundit . . . Mox Patrinus, vel Matrina, vel uterque simul, infantem de sacro fonte levant, suscipientes illum de manu Sacerdotis.

(i) The law is perfectly observed if the godparent holds the child during the actual pouring of the water by the priest. The alternative "statim levet

[1] Gougnard, *Collation/s Th/ologicar.* iq iî. p. 42; Prümmcr, *Tbtol. Moralis,* III, §146.

seu suscipiat" has reference, it would appear, to Baptism by immersion, in which ease the sponsor is directed cither himself to raise the child from the water or to receive the child, when raised by the priest, from the hands of the priest. The old translation (1829) of the *Bjrnan Catechism* stresses the word "suscipientes" to the extent of describing the sponsor, rather curiously, as an "undertaker".

For various reasons it is sometimes preferable for a nurse or other person to hold the child over the font. The minimum then required for a valid act of sponsorship is for the sponsor to touch the child physically during the act of Baptism. The words of the Code "aut tangat", sanctioning this usage, adopt the direction given by *Propaganda,* 21 January, 1856:[1] "baud susceptio absoluta requiritur, cum tenere aeque intelligatur ac sufficiat si patrinus, ut in more est, physico contactu infantis, jungat se cum eo cuius manibus ille tenetur, et ad aquae infusionem comitetur deferentem, quin opus sit ut patrinus vel matrina tantum, amoto deferente, infantem suas in manus excipiens, sacerdoti baptizandum exhibeat". The authors usually recommend that the sponsor should touch the child on the shoulder or on the breast; it suffices if the contact is made over the clothes of the child, or if the sponsor is wearing gloves. It is necessary for both sponsors to touch the child in this manner.

(ii) Does it suffice if this touch takes place not during the actual pouring of the water, but immediately before or afterwards? De Smet, quoting *S.C. Cone.,* 20 December, 1653, affirms that this suffices: "Valet etiam si in patrinum electus prolem baptizandam e manibus sacerdotis acceperit immediate, licet in ipso actu baptizandi illam non tetigerit. . . . Quinimo probabilius sufficit ut patrinus infantem quem tenet, immediate ante baptismum, baptizanti offerat ac porrigat."[2] This document is not in the *Fontes,* and De Smet, in a folium issued after the Code, directed the note to be deleted for some reason. We think the act to be certainly valid if by "touching afterwards" is meant "lifting from the font or receiving from the minister" as in the latter part of canon 765, §5, even though this direction refers primarily to Baptism by immersion. We think also that a simple touch, cither immediately before or after the Baptism, is probably equivalent to the directions of the canon "in actu baptismi physice tangat", though the point is disputable; the authors we have consulted do not advert to it. Whether valid or not, it is certainly incorrect, and the simple directions of the *Ordo Administrandi,* which are the same as those of the *Bdtuale Bomanum,* should be exactly observed.

29.—Baptismal Sponsor "Pro Forma"

John, a parishioner, happening to be in church at the time appointed for Baptisms, was requested by his parish priest to act as god-father to a baby whose parents bad made no provision for sponsorship. They were total strangers to John, who would, in the ordinary course, never see them again; nor bad he any reason to believe that bis intrusion into their family affairs would be welcomed, or that be would be given any opportunity of fulfilling the duties of a god-parent. Explaining this to the paroebus,

[1] *Fontes,* n. 4840.
[1] *De Sacramentis,* §345, §2.

be said that be could not conscientiously undertake the grave responsibilities of being god-parent to the child. To this the parochus replied that he only wished him to offdate at the ceremony, that it was notfor him to argue with his rector but to do wbat he was asked, and that if there was any scruple in his mind, the rector's authority should suffice to allay it. Upon this John gave in unwillingly, but is disturbed as to whether be should not rather bave persisted in his refusal. Wbat are bis obligations, and is the parish priest entitled to act in this way ?

(i) Canon 769. Patrinorum est, ex suscepto munere, spiritualem filium perpetuo sibi commendatum habere, atque in iis quae ad Christianae vitae institutionem spectant, curare diligenter ut ille talem in tota vita sc praebeat, qualem futurum esse sollemni caeremonia spoponderunt.

The obligation is insisted upon in an instruction of the *Holy Office,* 9 December, 1745, which contains the following teaching of Benedict XIV: "Et licet a Laymanno dicatur, patrinos amplius non curare de praedicta susceptorum institutione, unusquisque tamen facili negotio percipere poterit, aliud esse quod patrini non curent, aliud quod non teneantur curare. Tenentur etiam hodie ad id praestandum, si carnales parentes id facere negligant, uti docet S. Thomas[1] ubi postquam inquit unumquemque obligari ad faciendum id quod facere promisit, ad rem ita subdit: *ubi nutriuntur,* loquitur de pueris baptizatis inter catholicos Christianos, *satis possunt ab hac cura excusari,* loquitur de patrinis, *praesumendo quod a suis parentibus diligenter instruantur. Si tamen quocumque modo sentirent contrarium, tenerentur secundum suum modum saluti spiritualium filiorum curam impendere. . . . Et qui secus agit, se peccati reum fateri debebit."*[2]

(ii) The most one can say, therefore, is that the obligation always exists but that the sponsor is not called upon to intervene, if the parents, as would normally be the case, are doing their duty. In any case, he is only bound, as St. Thomas says, "secundum suum modum"; the right of the parents to educate their children religiously or not is unassailable in civil law, and the most the sponsor can do is to use whatever influence or persuasion he possesses.

Now, even with these limitations, it is an onerous task for anyone to undertake, and it is clearly wrong to force it on an unwilling subject. In canon 765, the first among the conditions for the validity of the act is that the sponsor should have the intention of undertaking the office: "intentionem habeat id munus gerendi". Hence, some authors rightly draw the deduction that, unless undertaken voluntarily, the act is invalid: "Intentio requiritur quia munus patrini voluntarie suscipiendum est; nemo coactus valide fit patrinus."[3] We cannot find the point expressly treated by the writers on the subject, but, on an analogy with other actions, the sponsor in this case would be reckoned valid in the *external forum* (e.g. he would contract spiritual relationship, diriment of marriage), unless he could prove rhat his act was not free; in the *internal forum* of conscience he can consider himself free from any moral obligation with regard to the spiritual duties of a sponsor.

(iii) Unfortunately, it is the fact that sponsors frequently carry their

[1] *Summa Thtol.,* III, 6", 8.
[2] *Fonfts,* n. 798.
[3] Qacys-Bouuacn, *jus Canoniar:,* I, §-»6.

obligations very lightly indeed, and regard this solemn act as a mere ceremony. "Subjective forsan oh ignorantiam ct dissipationem excusantur; at manet pastorum obligatio mores christianos pro posse restaurandi."[1] There is nothing in the canons, or in the teaching of authors, to justify regarding sponsorship as a mere ceremonial rite, and it is, at least, the duty of the clergy not to encourage such an attitude. The Church would not make a ceremonial observance diriment of marriage. A decision given in 1925 by the *Congregation of the Sacraments* touches, indirectly, on the point. It deals with the practice, prevailing in some districts, whereby the actual sponsor left it to the minister or the parents to select any available person to stand as his proxy: ". . . praedicta consuetudo est reprobanda: (1) quia indubitanter constare debet patrinum in facie Ecclesiae proprium munus suscepisse, quod per dictam consuetudinem manet incertum ct acquivocum; (2) quia patrinus suum munus suscipere debet cum plena notitia et conscientia inde exorientis obligationis ad mentem canon 769, quod excludere videtur praefata consuetudo, quippe quae redigit patrini officium ad quemdam inanem ritum. . . ."[2] In the circumstances of the case submitted to the *Congregation of the Sacraments*^ the practice is reprobated because it makes sponsorship an empty rite. The employment of a sponsor "pro forma", without anyone at all really undertaking the duties, is still more to be condemned.

(iv) There remains the objection that, frequently, the parents bring no sponsor to the Church, thus putting the minister in an awkward dilemma. What is to be done? One safeguard, as Prümmer notes, is for the priest to arrange about sponsors before the ceremony, instead of waiting till the moment of Baptism arrives[3]. But this is not always practicable, particularly when parents bring their children for Baptism at certain advertised times. From canon 765 the designation of a sponsor falls to the minister if the parents or guardians fail in procuring one; he might be able to get some good and charitably disposed person to undertake the office freely and willingly. Failing this, if he judges that the child is entitled to Baptism in the Catholic Church, he should baptize it without a sponsor rather than refuse Baptism: canon 762 requires a sponsor "quatenus fieri possit." "Ffaec ultima verba ostendunt baptismum sollemnem non esse omittendum vel notabiliter retardandum si haberi nequeat patrinus. . . ,"[4]* Wouters quotes a Provincia! Council of Utrecht in the same sense.[6] The solution given by the *Holy Office* for missionary parts is that the parents may answer in the rite without, of course, thereby contracting the obligations of sponsors.®

The Instruction concludes aptly with a phrase which summarizes the point of view sustained throughout this discussion: "Tandem Sacer Ordo una tecum est in improbanda parentum incuria, qui munus patrini non selectis idoneis personis, sed cuicumque qui eis cum Baptismus conferri debet, occurrit, committunt, licet pro certo habeant ipsum suum Elium spiritualem non amplius esse revisurum. . . .

1 Clacys-Bouuacrt, *Jus Canonicum,* I, §49.
a 29 July, 1925; *A.AS.,* XVIII, 1926, p. 43.
• *Tbeol. Moralis,* 111, §147.
• Clacys-Bouuacrt, *ibid.,* §44.
6 *Theol. Moralis,* II, §85.
• *Fontes,* n. jo ii.

30.—Proxy of Baptismal Sponsor

iFbat is required for the valid and lawful appointment of a proxy for the sponsor at Baptism?

S.C. Sacram.,!} November, 192.5 ; *A.A.S.,* XVIII, 1926, p. 43 ; Etenim prouti nemo a parocho proprio est admittendus ad patrini munus, qui conditionibus ad validam aut licitam hujus muneris susceptionem requisitis non praestat, ita quoties in sacramenti collatione quis patrini partes expleat non suo nomine, sed alterius certae et determinatae personae nomine ejusque mandato, hujusmodi mandatum seu mandantis voluntas legitime probetur oportet, videlicet per idoneos testes aut per scriptum ac legitimum documentum, nisi aliunde intentio mandantis sit certo et indubitanter parocho proprio baptizandi vel confirmandi explorata, adeo ut parochus investigare queat an designatus patrinus polleat qualitatibus jure requisitis, atque in libris, ubi ad tramitem ss. canonum est notanda sacramenti collatio, inscribatur nomen tum procuratoris tum mandantis, qui se quidem patrini munus cum hujus legalibus effectibus suscepisse scire debet. Hisce praecipue de rationibus hic Sacer Ordo reprobandam censuit consuetudinem quae, etsi recte observetur, mandatum dumtaxat generaliter praesumptum continet.

(i) Beyond the statement in canon 765, §5, that the sponsor must touch the child "per se vel procuratorem", the Code contains no directions about the appointment of a proxy, though from such canons as 1089, §1, 1659 or 1660 one may deduce what is the correct procedure.

The Instruction given by the Holy See, 25 November, 19251, was occasioned by a question sent from Utrecht. It was the custom, in that diocese, for the principal to give no express mandate to his proxy: instead the minister or the parents invited some person to represent the absent sponsor at the Baptism. To the question whether such sponsor contracted spiritual relationship and the consequent marriage impediment, the reply was: "Si patrinus, agnoscens huiusmodi consuetudinem, eidem sese conformare intendat, et aliunde patrinus ipse esse possit ad normam can. 765, *Affirmative?'* The act is valid if the principal, having the five qualifications set out in canon 765, accepted the office and left it to some other person to appoint his proxy: that is to say, a special express appointment of a proxy by the principal is not necessary for validity.

(ii) But, as is evident, this haphazard method of acting by proxy is open to many objections, the chief of these being that certainty is lacking with regard to the principal's qualifications and to his willingness to assume the obligation of sponsor. Therefore, on the occasion of this reply, a full Instruction also appeared explaining the gravity of the sponsor's office, deprecating the Utrecht custom and any other tendency to make the office a mere matter of form. The paragraph dealing with the appointment of the proxy is given above: the act is not only valid but lawful, if the principal, having the five qualifications of canon 766, secures the appointment of a proxy expressly, by writing, by witnesses, or by making his intention known to the parish priest. Both the name of principal and proxy are to be entered tn the baptismal register. Nothing is said about the qualifications

' English Tr. Bouscarcn, *Digut,* I, p. 338.

of the proxy, anti we may not, therefore, conclude that the proxy must come up to the standard of canons 765, 766. He must clearly, for validity, have sufficient knowledge to understand what he is doing, and, in our view, for the act to be lawful, he must also be a Catholic.

§5. REGISTRATION OF BAPTISM

31.—Registration of Baptism: Adoption

In the case of legal adoption of a child, when the adopting parents are most anxious that the child should not discover from its baptismal certificate that it is an adopted child, would the priest who holds the baptismal register be justified in cancelling the original entry and substituting the names of the adopting parents for the real parents or parent? Alternatively, would he be justified in annotating the original entry with a reference to a substitute entry containing the names of the adopting parents, and in giving a copy of the substitute entry, when asked, for required purposes? The civil authorities issue a fresh birth certificate when so requested by the adopting parents, on which their names alone appear, and unless the Church provides something similar, the kindly intentions of the adopting parents will be frustrated. If nothing is allowed in existing local legislation, would fresh legislation be possible within the framework of the Code of canon taw?

When the parish priest oj a baptised infant knows, only in ordinary confidence, that a child is not the child of its apparent father but of another man, and that the apparent father was moved to marry its mother out of compassion for her, and that be expressly wishes the child to pass as bis own and bear bis name, is the priest entitled to enter the apparent father in the registers as the child's real father?

Canon 470, §1: Habeat parochus libros paroeciales, idest librum baptizatorum ... et omnes hos libros, secundum usum ab Ecclesia probatum vel a proprio Ordinario praescriptum, conscribat ac diligenter asservet.

Canon 777, §1: Parochi debent nomina baptizatorum, mentione facta de ministro, parentibus ac patrinis ... in baptismali libro . . . referre.

§2. Ubi vero de illegitimis filiis agatur, matris nomen est inserendum, si publice eius maternitas constet, vel ipsa sponte sua scripto vel coram duobus testibus id petat; item nomen patris, dummodo ipse sponte sua a parocho vel scripto vel coram duobus testibus id requirat, vel ex publico authentico documento sit notus; in ceteris casibus inscribatur natus tanquam filius patris ignoti vel ignotorum parentum.

(i) Though the question raised is a difficult problem, and one which is not adequately examined by the writers we have consulted, the correct procedure can be determined if it is remembered that a parish priest making entries in his register is merely acting as a public notary, and in no sense as a judge of what is fitting or expedient.[1] The same observation applies to the certified copies which he makes from the register. It would therefore be a grossly improper procedure for him to cancel any record therein, or to provide an extract which is not in every particular identical with the original. His duty is to inscribe the details as required by the law in canon 777, and to

[1] Cf. *Jus Pontificium,* 1939. ρ· 5·

nuke only those additions or annotations required by other laws or by the Ordinary's directions: thus, from canon 1103, §2, marriage particulars are to be entered in the baptismal register. It is similarly his duty, when providing an extract from the register, to give a faithful copy of the document as it stands. An illegitimate child, for example, registered as such, may have become legitimate by the subsequent marriage of the parents, but the parish priest may not of his own authority alter the original record; he may, however, acting under instructions from the Ordinary, record in a marginal addition the fact of legitimacy from subsequent marriage.

Answering a question on the subject in *The Clergy Review,* I, 1931, p. 115, Mgr. Cronin suggested various formulae which might be used, subject to the approval of the local Ordinary, in registering the Baptisms of adopted children. Cases of adoption arc rather unusual, and when one occurs the parish priest should either make the entry as directed by canon 777 or refer it to the diocesan curia.

The kindly intention of the adopting parents is certainly a weighty consideration, though it is scarcely possible, one would think, to ensure that the adopted child shall be permanently ignorant of its own identity. There arc equally weighty reasons, c.g. the impediment of consanguinity or the inheritance of property, why its identity should not be obscured. In the case of a child, registered as in canon 777, §2, and afterwards adopted, the Ordinary might see fit to have the record removed from the parish register and transferred to the curial archives, on analogy with the arrangement for marriages of conscience in canon 1107; the true record would remain, but a copy would not be issued except after special investigation; moreover, the fact of Baptism can be established, for the purpose of Confirmation or Marriage, without an official extract from the register. In all cases of Baptism after adoption, provided the child is illegitimate and of unknown parents, the parochial clergy could be instructed to send the particulars for entry into the curial archive. But we think it unlikely that any ecclesiastical law or regulation would ever sanction, without any qualification, an official record that a child by adoption is the real child of the persons named, except when the parents themselves make this false statement.

(ii) Paternity is one of the most difficult things to prove even in a court of law. The parish priest inscribing the baptismal register, as already stated, is not a judge but a notary. He should disregard knowledge obtained privately in confidence and accept the man's statement for entry into the register, unless there is an authentic public proof, as mentioned in canon 777, §2, that the father is someone else. In this case the testimony of the apparent father "sponte sua" and the testimony "ex publico authentico documento" being in conflict, the proper course is to seek the Ordinary's judgement. This is the solution of a similar case given by Vcrmeersch in *Periodica,* 1930, p. 167, a solution based on such canons as 1031, 1032, 1034, which direct a reference to the Ordinary for the solution of similar doubts in other matters.

32.—Registration of Baptism: Domicile

A child whose parents are domiciled in parish "A" is born in a nursing home in parish "B" and baptized in the nearest church, which is that of parish "C". In which parish register should the entry be made?

Canon 90, §1: Locus originis filii . . . est ille in quo, cum filius natus est, domicilium, aut, in defectu domicilii, quasi-domicilium habebat pater vel, si filius sit illegitimus aut postumus, mater.

Canon 778: Si baptismus nec a proprio parocho nec eo praesente administratus fuerit, minister de ipso collato quamprimum proprium ratione domicilii parochum baptizati certiorem reddat.

S.C. Sacram., 29 June, 1941, n. n (</): Pcrviligent vero ut baptismus fortassis extra paroeciam originis collatus, praeter quam in renatorum regesto paroeciae . . . ubi quis reapse eum suscepit, scripto item consignetur libris paroeciae originis.

It has always been necessary to inform the parish priest of the candidate's place of origin whenever Baptism was administered elsewhere, but it was not certain before the Instruction issued 29 June, 1941, whether the entry was to be made in the register of the parish of origin. A private reply, *S.C. Cone.,* 31 January, 1927, quoted by Fr. Dunne in *The BJtual Explained,* p. 16, seems to direct that registration in the parish of origin is not necessary.

The procedure is now quite clear. In the above case the child is rightly baptized by the parish priest of "C" from canon 738, §2; he must enter the details in his own register and, in addition, send these details to the parish priest of "A"; the parish priest of "A" must enter them in his own baptismal register.

33.—Double Registration: an Objection

Should not the entry be in one baptismal register, namely that of the place oj Baptism, even when the place of origin is different? Otherwise it is possible that a certificate would later be issued, for the purpose of marriage, not containing the details required by canon 470, §2, *and the purpose of the law would be defeated. The entry which the law requires in "the books' of the parish of origin must refer not to the baptismal register of that place but to "liber status animarum*

Canon 777, §1: Parochi debent nomina baptizatorum, mentione facta de ministro, parentibus ac patrinis, de loco ac die collati baptismi, in baptismali libro sedulo et sine ulla mora referre.

Canon 1103, §2: Praeterea, ad normam can. 470, §2, parochus in libro quoque baptizatorum adnotet coniugem tali dic in sua paroecia matrimonium contraxisse. Quod si coniux alibi baptizatus fuerit, matrimonii parochus notitiam initi contractus ad parochum baptisimi . . . transmittat ut matrimonium in baptizatorum librum referatur.

S.C. Sacram., 29 June, 1941, n. 11 (£): Quoties matrimonium initur a nupturientibus, quorum alteruter vel uterque ad aliam paroeciam pertineat, Earochus qui matrimonio adstitit, praeter adseriptionem eiusdem in suo bro matrimoniorum, et, si ibi coniux fuerit baptizatus, etiam in calce actus baptismi, quamprimum de eodem celebrato commonefaciat parochos vel parochum loci baptismi amborum coniugum vel alterutrius. Hi autem receptas notitias transcribant ad normam can. 470, §2, in suis renatorum regestis. . . .

n. ii (J): Pervigilent vero ut baptismus fortassis extra paroeciam originis

collatus, praeter quam in renatorum regesto paroeciae, vel ecclesiae baptismal! fonte iure cumulative ad normam can. 774, §1, praeditae, ubi quis reapse cum suscepit, scripto item consignetur libris paroeciae originis. Ad rem quam primum per parochum vel rectorem ecclesiae collati baptismi tradendus est ad rectorem paroeciae originis nuncius scriptus, qui fideliter omnia et singula elementa complectatur quae ad baptismi actum rite conficiendum iure (can. 777) requiruntur.

(i) This small point is of some importance and we fully appreciate the objection made: the entry will be in two parochial baptismal registers, if our interpretation of the texts is correct, but the subsequent marriage of the party will probably be entered in only one. If, for the preliminary investigation of a marriage, the baptismal certificate is issued from the parish register, which contains no additional mention of a previous marriage, the purpose of the law' of canon 1105, §2, will be defeated. We agree, moreover, that one way of avoiding this difficulty is by securing the entry of Baptism in one baptismal register only, namely that of the church where Baptism was administered, and by making the entry now required by the Instruction, 29 June, 1941, not in the baptismal register but in the "liber status animarum" of the parish of origin.

(ii) But we cannot agree that this is what the Instruction directs to be done. The parish priest of the place of Baptism must send to the parish of origin "omnia ct singula elementa quae ad baptismi actum rite conficiendum iure (can. 777) requiruntur", namely all the details which are required by the law of canon 777 for the proper completion of a baptismal record. "All the details" prescribed by canon 777, names of minister, parents, sponsors and the rest, are only required on the supposition that a complete legal record of Baptism is to be entered in the baptismal register. How could all these points possibly be recorded in the "liber status animarum", and, even if it could be done, what useful purpose would be served ? This book is of an impermanent character, constantly being changed with the shifting of the population, and is quite different from the other parochial registers; it is for this reason that canon 470, §3, does not require a copy to be sent annually to the episcopal curia.

Moreover, canon 778, which merely requires the parish of origin to be informed of Baptism administered elsewhere, has the "liber status animarum" in view, whereas the Instruction cites canon 777, which is indubitably a description of what must be entered in the baptismal register. The whole purpose of the Instruction is not to perfect the pastor's knowdedge of his flock, but to enjoin additional safeguards for the proof of freedom to marry, and in this respect the Instruction is an amplification of the law of the Code.

Now, w'hat usually happens when a baptismal certificate is sought on the occasion of marriage ? The request is addressed to the parish priest of the place of origin, since it is assumed that the person will have been baptized in this church. In the event of Baptism being administered elsewhere, there will be no indication of the place unless the law as formulated in this Instruction has been observed, and we believe its non-observance to be the commonest cause of failure to trace baptismal records.

We find, accordingly, in the English version of the Instruction printed in the *Ecclesiastical Review,* November 1941, p. 582, that the words "libris paroeciae originis" are translated, correctly we think, "in the baptismal register of the place of origin".

(iii) How then is the difficulty outlined in (i) to be avoided ? A careful reading of the Instruction shows that the additional details, whether of marriage, subdiaconate, decree of nullity or any other relevant facts, arc to be entered only in the baptismal register *of the place of Baptism.* Thus, in η. π we read that the priest assisting at the marriage must enter it into his baptismal register "si ibi coniux fuent baptizatus", or alternatively he must send the details of the marriage to the parish of Baptism; the same point is noticed in art. 225, §1, of the Instruction for diocesan tribunals, 15 August, 1936, quoted in a footnote to n. 4 (r) of the present Instruction.

We must admit that multiplication of rules may, in practice, have an effect the reverse of what the legislator intends; the rules may by their complexity demand still further elucidations. In this instance, in order to avoid the difficulty created by two registers, it will be necessary before marriage to insist on receiving an extract from the register of the place of Baptism, whenever the one received from the place of origin indicates that Baptism was administered elsewhere. The Instruction nowhere, so far as we can discover, directs this to be done, but it is implied in all those parts of the document which require that the additional entries shall be in the register of the place of Baptism.

Canon 1021, §1, *ana the commentators thereon require a certificate oj Baptism from the non-Catbolic party in a mixed marriage. IP'by is this direction never observed in this country ?*

Canon 1021, §1: Nisi baptismus collatus tuent in ipso suo territorio, parochus exigat baptismi testimonium ab utraque parte, vel a pine tantum catholica, si agatur de matrimonio contrahendo cum dispensatione ab impedimento disparitatts cultus.

(i) Most of the commentators understand by *testimonium*, in this canon, an authentic extract from the baptismal register, signed by the parish priest. This supplies an undoubted proof of Baptism and, in addition, offers a proof of freedom to marry on other counts, since the law' requires the facts of marriage, holy orders and nullity decree to be entered in the register. The writers usually deal with the baptismal proof under the general heading of proof of freedom to marry, and a copy of the actual entry is an obvious means of assurance. Moreover, many local law's explicitly require i copy of the extract to be produced at marriage, and canon 1020, §3, assumes that the Ordinary will make certain rules in respect to this previous investigation of marriages by the parish priest.[1]

(ii) Others, with greater accuracy, do not require this official extract precisely as a proof of Baptism, though it is required on other counts as a proof of freedom to marry, e.g. De Smet: "non requiri extractum baptismale ad verbum exhibens actum in registro insertum, nisi id in jure particulari exigatur; dicitur enim tantum: baptismi *testimonium.*"[2] The proof of Baptism is in canon 779: "Ad collatum baptismum comprobandum, si nemini fiat praciudicium, satis est unus testis omni exceptione maior, vel

[1] E.g. *Liverpool Sjnod,* 1934. n. 148: *NottinRbam Deereta.* 1924, p. 24

[1] *De Matrimonio,* §678.

Ssius baptizati iusiurandum, si ipse in adulta aetate baptismum receperit." Sn this interpretation the proof of Baptism of the non-Catholic could often be got without applying to a non-Catholic church for the certificate. As a matter of fact, a dispensation from mixed religion usually contains one from disparity of worship *ad cautelam,* but the priest is obliged by the common law to get whatever evidence of Baptism is possible in the case of the non-Catholic party. Cf. *Westminster Synod,* XLV, 1925^. 12: "In asking for dispensations 'in Matrimoniis mixtae religionis', evidence of Baptism must be diligently sought." It is quite certain, therefore, that "testimonium baptismi" is required of the non-Catholic. Canon 1021, §1, excepts only the case of an unbaptized non-Catholic, and this exception would be quite meaningless unless it is to be understood, by implication, that the baptized non-Catholic is not excepted from the law. Gasparri notes[1] that this implication is sufficiently clear from the terms of canon 1021, §1. Prümmer quotes an instruction of the Holy Office to this effect, dated 25 May, 1897,[2] but we cannot trace the document; it is not in the *Fontes.*

(iii) The only remaining *dubium,* therefore, is whether a priest should obtain what is, after all, the surest testimony of the non-Catholic's Baptism, by requiring an extract from the register. The commentators who understand *testimonium* in the sense explained above under (i) draw the natural conclusion that he should.[3] We arc of the opinion that he should not, at least in this country, since there is a contrary custom against it which has the force of law, according to canon j. Claeys-Bouuaert provides for this exception,[4] and Nau states explicitly that the baptismal record of the non-Catholic is not to be sought in the case of a mixed marriage.[6]

[1] *De Matrimonio,* §144.
[2] *Tbeoi. Moralis,* 111, §723.
[3] E-g. Chclodi, *Dt Matrimonio,* §21; Cappello, *Dt Matrimonio,* §149.
[4] II. §zi9.
[5] *Marriage Laar of the Code,* p. 41; cf. also Acker, *Nt Temere,* p. 43,

IL CONFIRMATION

35.—Priest Minister of Confirmation

When a priest, delegated by the Holy See, administers this sacrament, is the form contained in the Pontifical io be varied in any particulars ?

A long Instruction from the *Congregation of the Sacraments,* 20 May, 1954,1 gives, firstly, for the priest's information, a summary of the law, as modified by the Code and recent directions of the Holy See, concerning the minister and the age of the subject; secondly, the liturgical and canonical rules to be observed in the administration of this sacrament; thirdly, the formula to be used by the priest minister.

The third section of the Instruction is now printed in the typical edition of the *PJtuale Romanum* (1925) among the appendices. It differs from the form in the *Pontifical* only in the omission of references to *pontificalia* used by bishops exclusively, and also in a fuller and more explicit version of the rubrics.

The words and actions are the same as when the sacrament is administered by a bishop, so that the priest who has not got the modern *PJtuale Romanum* may follow the rite as given in the *Pontifical,* or in the R/7w *Servandus.*

The only important addition, not in the rite itself, is the first rubric which requires the priest minister to explain, before administering the sacrament, that the ordinary minister is a bishop, and that a priest is functioning by delegation of the Holy See. The decree of delegation must be read in the vernacular.

36.—Validity of Confirmation

Is the sacrament of Confirmation validly conferred on a candidate who arrives after the extension of the bishop's hands, with the accompanying form "Spiritus Sanctus", etc., at the opening of the rite, but approaches with the rest singly and is anointed with the form "Signo te, etc." ?

Canon 789: Confirmandi, si plures sint, adsint primae manuum impositioni seu extensioni, nec nisi expleto ritu discedant.

Imposition of hands, as recorded in the Acts of the Apostles, is essential for the sacrament of Confirmation. But our rite contains two such impositions: (i) at the beginning of the ceremony, (ii) accompanying the unction with chrism. Some older theologians used to maintain that the first was at least as necessary as the second for the validity of the sacrament, but the view that it was not essential predominated and is expressly taught by the *Holy Office,* 17 April, 1872: "Saepe accidit in Chrismate infantium, praesertim in multitudine eorum ut furtim aliquis immisceatur qui tamen

l A.A.S., XXVII, 1935, p. 12.

praesens non tuit in prima manuum extensione Episcopi. An dicti infantes relinquendi sint confirmati absque prima manuum extensione? *Kesp.* Affirmative. Curandum tamen ut omnes confirmandi adsint etiam primae manuum impositioni:"[1] Cappello cites a later reply of the *Holy Offici' 22* March, 1892, in the same sense, and there is a direction of Pro*paganda,* 6 August, 1840, that the sacrament is not to be repeated conditionally in a case where the confirming priest omitted all the preceding rites and prayers, beginning to confirm the candidates at *Signo te,* etc. It is therefore quite certain that the essentials arc in this second imposition of hands which accompanies the anointing.

Nevertheless it is gravely unlawful to miss any part of the rite. Unless there is some grave reason, which is rather difficult to imagine in this country, we are of the opinion that candidates who come late should not be allowed to present themselves at the second imposition of hands; their reception of the sacrament can easily be deferred to some other occasion.

37.—Confirmation and First Communion

Amongst the children in a first Communion class in the parish school are a few who have not been confirmed. Since the bishop would be visiting the parish for Confirmation in two months' time, it wasjudged better that the children should defer first Communion until after Confirmation. Was this a right decision?

In a reply of the *Congregation oj the Sacraments,* 50 June, 1952,[2] the ruling of canon 788 concerning the age for Confirmation was reaffirmed, and a previous interpretation declared to be preceptive. The document continued: "declarat eadem Sacra Congregatio, equidem opportunum esse et conformius naturae et effectibus sacramenti Confirmationis, pueros ad sacram Mensam prima vice non accedere nisi post receptum Confirmationis sacramentum, quod est veluti complementum Baptismatis et in quo datur plenitudo Spiritus Sancti (St. Thomas, p. iii, quaestio 72, art. 2); non tamen iidem censendi sunt prohiberi quominus ad eandem Mensam prius admittantur, si ad annos discretionis pervenerint, quamvis Confirmationis Sacramentum antea accipere non potuerunt". The instruction on this point was repeated, 20 May, 1934, in the rules formulated for priests delegated to administer the sacrament of Confirmation.

The decision reached above was not, therefore, correct. The reason, of course, is that a child who has reached the age of discretion is bound by the law of the Church to make his first Communion, and the lack of Confirmation is not an adequate reason for postponement.

38.—Confirmation Register

It appears that the law requiring the particulars of Confirmation to ÙY *entered also in the baptismal register is not usually observed in this country. Is it a grave obligation?*

[1] *Fontes,* n. 1012.
[2] *A.AJ.,* XXIV, 1952, p. 271.

Canon 798: Nomina ministri, confirmatorum, parentum et patrinorum, diem ac locum confirmationis parochus inscribat in peculiari libro praeter adnotationem in libro baptizatorum de qua in can. 470, §2.

Canon 470, §2: In libro baptizatorum adnotetur quoque si baptizatus confirmationem receperit . . . eacque adnotationes in documenta accepti baptismatis semper referantur.

There is a similar law requiring the particulars of marriage to be entered in the baptismal register, and everyone perceives its purpose: since a baptismal certificate is required before marriage, the fact of the particulars of a previous marriage being recorded will be a safeguard against bigamous marriages.

It cannot tie maintained that there is the same gravity in the law which requires an entry of the fact of Confirmation to be made in the baptismal register: it is altogether unlikely that anyone would want to be confirmed more than once. But parties should be confirmed before marriage (canons 1021, §2, and 787), and the Instruction on Marriage Preliminaries, *S.C. Sacram.*, 29 June, 1941, mentions the certificate amongst the documents required. The double entry is meant, we suppose, for the sake of security, and all the modern registers of Baptism have a space for the details of Confirmation. We think, accordingly, that the obligation of this law is *per re* grave,1 though it could be maintained, no doubt, that in many places custom sanctions its non-observance.

1 Cf. Cappello. *De Sacramentis.*

III. HOLY EUCHARIST: THE MASS

§r. EUCHARISTIC MATTER AND FORM

39.—Valid Eucharistic Matter

A priest in an invaded district, having exhausted his stock of wine and altar breads, can obtain only commercial wine and "ersat^' bread made from a little wbeaten flour and a great deal of potato. Except by using these unsatisfactory materials he will be unable to say Mass and give Viaticum to the dying, and he is unable to approach the local Ordinary. Is bejustified in using them ?

Canon 815, §1: Panis debet esse mere triticeus et recenter confectus ita ut nullum sit periculum corruptionis. §2. Vinum debet esse naturale de genimine vitis et non corruptum.

S.C. Sacram., 26 March, 1929: Ideo consequitur panem ex alia substantia conflatum, vel illum cui tanta sit admixta quantitas a tritico diversa, ut iuxta communem aestimationem, tritici panem esse dici nequeat, materiam validam pro conficiendo Sacrificio et Sacramento Eucharistico haud constituere. Item ut valida materia haberi nequit vinum, seu potius liquor, qui sit ex pomis aliisque fructibus eductus, vel chimicae artis ope elaboratus, quamvis vini colorem eiusque quodammodo elementa continere edicatur, vel illud vinum, cui aqua maiore vel pari quantitate sit permixta.

The teaching of the authors and the earlier decisions of the Holy See have all been incorporated in the above decree, which must now be considered the *locus classicus* of the law on the subject.

(i) Local legislation usually requires the clergy to use only that wine which has been certificated by the bishop. It is a positive law which does not bind in a grave emergency, when one is permitted to use any genuine wine which has been produced from the grape. If it is obtained from a reliable source, e.g. "château bottled", even though possibly not lawful matter, owing, for example, to its alcoholic strengthening being above what is permitted, its validity can be regarded as morally certain.

Similarly it is permitted, in an emergency, to disregard the local legislation about the altar breads, and be content with moral certainty that the flour used is made from genuine wheat. If an alien grain, such as barley, is used, or even mixed with the wheaten flour so that the former preponderates, the matter is invalid; *a fortiori* it is invalid if the alien substance is not any form of grain but potato. Thus the Instruction: "Imo, uti dubia reputanda erit materia, nec proinde adhibenda, si, licet non maiore aut pari quantitate quaecunque alia substantia tritico aut vino commisceatur, *notabilis* tamen quantitas aliena sit ipsi admixta." It is implied in this text, as is explicitly stated with regard to the wine, that a foreign substance in equal quantity renders the matter invalid.

(ii) The unsatisfactory matter which the priest proposes to use is regarded as bread *in the common estimation,* and this is, indeed, the accepted criterion for determining valid sacramental matter. But it must be observed, as the

Instruction states, that the matter needs to be "wheaten" bread in the common estimation, not merely "bread"; the same rule must apply to what is regarded as the juice of the grape, and it was precisely in order to warn us against the use of substitute or *ersat^* materials that the Instruction was issued in 1929. The "common estimation" criterion, elaborated by theologians long before substitutes were invented, cannot be applied to accepting as valid matter for the Holy Eucharist a liquor manufactured from chemicals, or bread composed chiefly of potato.

(iii) It would take us beyond the limits permitted to outline all the possible defects in the bread or wine. The best manual treatment is Cappello, *De Sacramentis,* §265 seq., and in periodical literature the *Ecclesiastical Review,* July, 1938, "Mass W'ine, Its Manufacture and Church Legislation".

If, for any solid reason, the matter is reckoned doubtful, it is forbidden to use it for the Holy Eucharist even in the circumstances outlined above. It is true that, in spite of the condemned proposition regarding the use of probable opinions in administering sacraments,[1] the theologians teach that doubtful matter may be used and a sacrament conferred conditionally whenever the urgent spiritual need of the faithful demands it. But the Holy Eucharist must be excepted from this doctrine, firstly, because actual reception of Viaticum is not necessary *necessitate medii* for salvation;[2] secondly, because the use of doubtful matter exposes the faithful to the risk of material idolatry.[3] Unless, therefore, a priest has moral certainty that the bread and wine is valid matter, he is forbidden to use it for Mass.

40.—Defective Wine Consecrated

Owing to the difficulty of obtaining good wine, and the need of making it last as long as possible, it quickly deteriorates and corrupts. W'hat should the celebrant do if, after receiving the chalice, he concludes that the matter used is invalid?

The situation is described in the Missal, *De Defectibus,* IV, 6, a text which should be carefully read, and amplified by the teaching of the commentators. The best and most recent of these, Fr. J. B. O'Connell, *The Celebration oj Mass,* I, p. 221, writes as follows: ". . . he takes a fresh Host, and offers it mentally, without raising it. Next he takes fresh wine and water (at the centre of the altar and without ceremonial actions, except the sign of the cross over the water), offers it mentally, and then consecrates both the bread and wine, beginning at *Qui pridie,* without genuflexions or any elevation. He then consumes the Host (although he has already consumed another Host) and the Precious Blood. . . ."

The principle behind these directions is, firstly, to secure that both species shall be lying on the altar together and at the same time: secondly, to omit all unessential actions, such as genuflexions and elevation, in order not to draw the public attention unnecessarily to the incident. It is for this latter reason that the rubric directs, when the case occurs in a public place with many present, the re-consecration of the wine alone; the priest will then begin from the words *Simili modo.*

[1] Dcnz. ixji.
[2] Priitnmcr, *Tbeo!. Moralis,* III, §18.
[3] Noldin, *Tbeo!. Moralis,* IП, §12.

It may happen that some considerable delay intervenes before fresh wine can be procured; the priest should, nevertheless, await its arrival in order to complete the sacrifice. If his decision on the invalidity of the matter is not made until his return to the sacristy, nothing further should be done.

41.—Modicissima Aqua

What is the exact proportion oj water to be added to the chalice beyond which the matter is to be reckoned invalid?

Canon 814: Sacrosanctum Missae sacrificium offerri debet ex pane et vino, cui modicissima aqua miscenda est.

R/7. *Celebr. Miss.,* VII, 4: infundens parum aquae in Calice . . .; VII, 9: infundit paululum aquae in Calicem.

Caerem. Epp.,II, viii, 62: infundit pauculum aquae in Calicem. . . .

S.C. Sacram., 26 March, 1929: Item ut valida materia haberi nequit vinum . . . cui aqua maiore vel pari quantitate sit permixta. . . . Imo, uti dubia reputanda erit materia, nec proinde adhibenda, si, licet non maiore aut pari quantitate quaecunque alia substantia tritico aut vino commisceatur, *notabilis* tamen quantitas aliena sit ipsi admixta.

The above rubrics determine the amount of water to be added at the Offertory, whereas the Instruction, 26 March, 1929, discusses the preparation of the wine before it is brought to the altar. In order to obey the rubrics, which do not determine the proportion of water, one drop suffices; but several drops arc permitted and recommended by the writers, and it is usually quite unnecessary to be scrupulous, since the rubrics themselves do not determine the quantity but simply direct that a "little" water should be added. It is implied that the quantity of wine is far in excess of the water, which becomes absorbed into the former.

If it is necessary to use the smallest possible amount of wine, the amount of water should be correspondingly less in order to obey the rubrical directions. But the point may be reached, particularly if it is feared that the wine is already, perhaps, adulterated before being brought to the altar, when the question ceases to be merely rubrical, and is concerned rather with deciding whether the matter is valid. We are then to be guided by the Instruction of 26 March, 1929, from which two points transpire: if the quantity of water equals that of wine the matter is invalid; secondly, if the quantity added is "notable" the matter is doubtful and may not be used even in cases of necessity.

It has never been officially determined what proportion of water to wine is reckoned notable. Some permit as much as one third, an opinion not easily to be accepted as safe; others suggest one eighth, a conservative estimate; an examination of the commentators reveals a general agreement that one fifth comes well within what is a lawful proportion of water.[1]

The underlying theological principle is thus explained by St. Thomas in discussing whether the substance of the water is converted into the Precious Blood: ". . . aliorum opinion probabilior est, qui dicunt, aquam converti

[1] Cf. *St.* Alphonsus, *Tbeol. Moralis.* VI. ^zio; Cappello. *De Sacramentis,* I, ^204; O'Connell, *Celebration of Mass,* Π, p. 81.

in vinum, et vinum in sanguinem: hoc autcm fieri non posset, nisi adeo modicum apponeretur de aqua, quod converteretur in vinum: et ideo semper tutius est parum de aqua apponere, et praecipue si vinum sit debile, quia si tanta fieret appositio aquae, ut solveretur species vini, non posset perfici sacramentum . .

42.—Doubtful Consecration

If it should happen that a priest, whilst saying the "Unde et Memores" his no recollection of having recited the words of consecration, is it obligatory or lawful to repeat them'?

De Defectibus, V, 2: Si celebrans non recordetur se dixisse ca quae in consecratione communiter dicuntur, non debet propterea turbari. Si tamen certo ei constet, se omisisse aliquid eorum quae sunt de necessitate Sacramenti, id est, formam consecrationis, seu partem: resumat ipsam formam, et cetera prosequatur per ordinem. Si vero valde probabiliter dubitet, se aliquid essentiale omisisse: iteret formam saltem sub tacita conditione. Si autem non sunt de necessitate Sacramenti, non resumat, sed procedat ulterius.

The kind of doubt which makes a repetition of the form obligatory, and therefore lawful, is one which is based on a solid probability. It must be a prudent doubt, as canon 732, §2, states in dealing with the repetition of certain sacraments. Other things being equal, a doubt which arises merely and solely from not recollecting the utterance of the words should be dismissed at once. A judgement should be made that an action which has been properly performed on every morning of a man's life has been rightly done, even though, on one occasion, the recollection of it is wanting. To repeat the form in such circumstances is unlawful, though, no doubt, scrupulosity would excuse one from committing any sin. "Si in Missa post consecrationem dubium tibi oriatur de formae debita prolatione, vel de totali omissione, nihil repetere debes, nec potes, cum alias haec omittere non soleas: iudicandum enim est ex communiter contingentibus, nisi tamen valde probabiliter dubites, ut loquitur Rubrica."[2]

A doubt of this kind might be prudent if some other element entered into the case, in addition to the non-recollcction of having uttered the words. For example, a priest might be aware of the fact that, owing to his state of health or some unusual anxiety, he is forgetting to do other things in his daily life which he has been accustomed habitually to do. D'zYnnibale carefully distinguishes in applying the doctrine to the various sacraments: "Quoad dubium vero haec regula sancienda est: si hoc prudens est, sacramentum iterare licet; si est imprudens, non licet omnino. Sed cum agitur de baptismo, vel sacerdotio, *aliqnale* dubium sufficit; cum de Eucharistia et poenitentia, in quibus sola repetitione formae opus est, non prorsus inane. In dubiis autem huiusmodi sacramentum iterare, nedum licet, sed regulariter oportet, nempe sub conditione."[3]

l Summa Tbeol., III, 74, 8.
1 Tummolo-Iorio, *Theol. Moralis,* II, §105.
• *Tbeol. Moralis,* III, §268.

43.—Mass with Leavened Bread

Everyone knows that unleavened bread is valid matter, but the manualists do not discuss very fully whether leavened bread may be used in a case of necessity, e.g. in order that the people may observe the Sunday precept if by a mischance, a Host of unleavened bread cannot be obtained.

Canon 816: In Missae celebratione sacerdos, secundum proprium ritum, debt panem azymum vel fermentatum adhibere ubicumque Sacrum litet.

De Defectibus, III, 3: . . . similiter si non sit azymus, secundum morem Ecclesiae Latinae, conficitur, sed conficiens graviter peccat.

Canon 866, §3: Sanctum Viaticum moribundis ritu proprio accipiendum est; sed, urgente necessitate, fas esto quolibet ritu illud accipere.

The older authors gave only one example of the necessity which permits leavened bread, namely the case mentioned in *De Defectibus,* III, 5, when it is detected either before or after the consecration that the Host is of invalid matter—for example, that it is corrupt. The necessity is that the sacrifice should be completed, and if no unleavened bread is available, leavened should be used. This is the only example given by most of the modern authors following St. Alphonsus, e.g. Noldin, *Theol. Moralis,* III, §107.

Cappello gives a second case of necessity—the need of administering Viaticum to a dying person. He argues from canons 851 and 866, which contain the milder modern discipline permitting Viaticum to be administered, in a case of necessity, by a Latin priest "in fermentato". The canons, of course, refer to administering Holy Communion, not to saying Mass, but he argues from this rule that saying Mass "in fermentato" is permitted in a case of extreme necessity for the purpose of administering Viaticum. Tummolo-Iorio agrees that this opinion is probable.[1] The older authors expressly denied that the necessity of Viaticum justified celebrating Mass "in fermentato",[2] and the modern manualists we have consulted follow this teaching with the exception of the two authors mentioned. If such extreme necessity does not justify the use of leavened bread, in the opinion of most writers, it is obvious that less urgent necessities do not; for example, the case put in this question, or the case of a priest travelling in parts where there are no Latin churches. The reason is the predominance of the rule that a priest may not celebrate except in his own rite.

We must conclude, therefore, that if no unleavened bread is obtainable, the people must forego their Sunday obligation. This positive law is of lesser gravity than the law of using unleavened bread in the Western Church. Actually, it is a fairly simple matter to make a paste of flour and water and bake it by spreading it on a heated metal plate. The necessity of Viaticum might conceivably be so urgent that there would be no time to do this, and we agree with the authors mentioned that unleavened bread may then be used.

[1] *Tbtot. Moratif,* II» §278.
[1] Gasparri, De *Eucbariftiai* §804.

44.—Ablutions at Mass

Is it permitted, in cases of necessity, to use only water at the ablutions?

It is commonly taught, following St. Alphonsus, *Theol. Moralis,* VI, §408, that the rubric does not bind *sub gravi.* Its non-observance would not even be a venial sin in cases of necessity, e.g. if it was not discovered that the cruet was empty until the moment of the ablutions arrived and wine could not easily be obtained.

When it is foreseen that the necessity will be permanent, for example, owing to the extreme scarcity of wine, an induit should be obtained. The permission is included in the Apostolic faculties, Formula III, issued by *Propaganda* to missionary ordinaries: "Permittendi ut in utraque purificatione calicis aqua tantum adhiberi possit, dummodo tamen extrema adsit vini deficientia." T.R.C., 12 May, 1944, sanctioned during the war the use of water alone "iis in locis ubi, iuxta prudens Ordinarii iudicium, vini angustiae hodie habeantur vel in posterum praevideantur."

45.—Renovation of Sacred Species

The Congregation of Rites directs the Sacred Species to be renewed each week, a regulation which is faithfully observed in Ireland. Yet in England the idea is current that once a fortnight suffices. Is there any justification for this practice?

Canon 1272: Hostiae consecratae, sive propter fidelium communionem, sive propter expositionem sanctissimi Sacramenti, et recentes sint et frequenter renoventur, veteribus rite consumptis, ita ut nullum sit periculum corruptionis, sedulo servatis instructionibus quas Ordinarius loci hac de re dederit.

Rituale Romanum, Tit. iv, cap. i, n. 7: Sanctissimae Eucharistiae particulas frequenter renovabit. . . .

Caerem. Epp., I, vi, 2: Eius (sacristae) praecipua cura erit . . . ut ea quae ad sacrosanctae Eucharistiae cultum et honorem spectant nitide conserventur . . . iliaque (Sancta Eucharistia) saltem semel in hebdomada mutetur ct renovetur.

J.R.C., 12 September, 1884, n. 5621.2: In Ecclesiis huius dioecesis servari ne potest consuetudo renovandi SSmam Eucharistiam semel vel bis in mense; licet qualibet hebdomada iuxta *Caeremoniale Episcoporum* eadem SSma Eucharistia foret renovanda? *Resp.* Servetur dispositio Caeremonialis Episcoporum.

(i) The common law does not define the time limit strictly but leaves the matter to the local Ordinary. Since the purpose of the law is to prevent the Sacred Species from becoming corrupted, it might happen that local climatic conditions require renewal every two or three days, even though the local Ordinary has given no instructions on the subject. If there is no danger of actual corruption, reverence requires that renewal should be frequently effected. Many ancient legal texts, in addition to that of the *Caeremoniale Episcoporum*[1] determine this frequency as weekly, and there is not the

1 Cf. *Collationes Brumeuses,* 1928, p. 60.

slightest doubt that weekly renewal is the most perfect observance of the law, especially in localities where no local regulations exist.

(ii) As indicated in canon 1272, it is open to the Ordinary to determine the time limit more exactly. If, as our correspondent says, the weekly rule is faithfully observed in Ireland, it is because this is the law of the Plenary Council of Maynooth, 1927, n. 339: "Ad periculum coruptionis evitandum, hostiae consecrandae sint recentes, et consecratae renoventur octavo quoque dic." Priests who are accustomed to this rule rightly continue to observe it, even when they may be outside of the territory subject to the Maynooth Council. If, as we shall show, certain local English regulations direct fortnightly renewal, it is for the purpose of determining the limit beyond which one may not go; obviously, these laws are more perfectly observed by renewing the Sacred Species at periods of less than a fortnight, and it will be found that local laws usually imply this by directing that renewal shall be *at least* once a fortnight, e.g. *Westminster Synod,* III, 1858, n. 19: "Hostiae . . . renoventur saltem infra 14 dies"; *Liverpool Synod,* 1934, n. 202: "In hac dioecesi hostiae consecratae saltem alternis hebdomadis renoventur"; *Lancaster Statuta,* 1935, n. 162: "The Eucharistic Hosts should be renewed at least every other week"; *Malines Statuta,* 1924, n. 280: "Octava quaque die, maxime ubi loci vel aeris humiditas id requirit, aut saltem singulis quindenis, substituatur hostiae novae. . . ."

(iii) In other places the Ordinary is content with the terms of canon 1272, e.g. *Middlesbrough Decrees,* 1933, n. 107. *I Westm.,* Dec. XVIII, n. 13, has "frequenter" in the text of the law and contains in an historical note the information that weekly renewal was required by an Oxford Council in 1222. The question remaining, therefore, is whether, in those places which have no local law on the point, renewal must be weekly, as J.R.C., n. 3621, determines. In our view, this is not strictly of obligation, and a fortnightly renewal suffices. The reason for this opinion is the fact that the Holy Sec has fully approved the text of local synods permitting a fortnightly renewal, which would not have been done if it was opposed to the common law. An earlier Malines Council determining the time as "singulis mensibus aut circiter" was changed by the Holy Sec to "singulis saltem hebdomadis aut circiter", permitting by the word "circiter" a certain latitude.[1] Benedict XIV, in *Etsi Pastoralis,* 26 May, 1742, §vi, n. *4,*[2] uses the phraseology employed in many local councils of our own day: "singulis octo diebus aut saltem quindecim". The reply 5.R.C., η. 3621, recommending the rule of *Caerent. Epp.,* must be interpreted, in our view, according to custom which, as far as we know, everywhere tolerates fortnightly renewal unless there exists local legislation to the contrary, as in Ireland.

§2. SUNG MASS

46.—Pro-Subdeacon

In the Dominican rite at High Mass the subdeacon at the Offertory offers the chalice and paten (containing the oblations, bread and wine) to the deacon, who then passes

[1] *Collationes Brugtnsa,* loc. cit.
[*] *Forties,* n. 528.

them to the celebrant. Should a pro-subdeacon notyet tonsured do this ? He neither wears the maniple nor prepares the chalice.

(i) As in many other practices, the Holy See has been progressively liberal in permitting the office of subdeacon to be performed by one not in major orders. In 1715 permission was refused to certain canons in minor orders; in 1784 the practice was forbidden "extra casum absolutae et praecisae necessitatis". On the other hand, rather than tolerate the French custom of chanting a solemn Mass with the assistance of a deacon only, the Archbishop of Cambrai was instructed, in 1853, to use a cleric in minor orders as subdeacon.[1] Up to 1906 some real and urgent necessity was required to justify the practice. The decree of 10 (14) March, 1906, n. 4181, which is the present discipline on the subject, merely requires any reasonable cause, which would be, for example, just the desire to have a solemn Mass; but it would, in our view, be unreasonable to make use of this permission if a cleric in major orders can easily be obtained.

(ii) In all the official texts and commentaries we have consulted the rule is rigidly maintained, as expressed in n. 4181, that the pro-subdeacon must at least be tonsured. It is purely a matter of positive law, and it is quite possible that the Dominicans and other regulars enjoy an induit permitting a non-tonsured person to act as pro-subdeacon, e.g. a professed subject of the Order, but we know of no justification for this practice in the common law as interpreted by canonists and liturgists of repute. On the contmry, the Franciscans were instructed, 22 July, 1848, n. 2965.5, that a regular, even in cases of necessity, must not perform this office unless he is a cleric, a rub'ng summarized by Ojctti "debet necessario esse clericus, etsi sit regularis".[2] Wc do not know of any texts or arguments in favour of employing a non-tonsured person for this office, apart from permission by induit.

(iii) As to what is permitted a cleric pro-subdeacon on these occasions, the principle seems to be, as far as matters of this kind can be reduced to a principle, that he may not do any of the things which are specifically the office of a subdeacon, under the penalty of possibly incurring the irregularity of canon 985.7. This office is described in the Ordination rite as follows: "Subdiaconum enim oportet aquam ad ministerium altaris praeparare; Diacono ministrare; pallas altaris et corporalia abluere; Calicem et Patenam in usum sacrificii eidem offerre". Hence n. 4181 rules that he must not wear a maniple; that he must not, before the Offertory, wipe the chalice and pour the water therein—this is to be done by the deacon; that, after bringing the chalice to the altar, he must not touch it during the Canon nor remove and replace the pall; finally, that after the ablutions he must not wipe the chalice—this is to be done by the celebrant.[3]

The directions arc quite clear for a solemn Mass celebrated according to the Roman rite. Dominicans and some other regulars have a rite which varies, in some particulars, from that of the Roman Missal: the chalice is prepared at the *sedilia* between the epistle and gospel; after the offertory has been read, both deacon and subdeacon cross over to the epistle side, where

[1] J.R.C. nn. 2221 and 2525. Cf. *t'Ami du Clergé,* 1924, p, ÏO$.

[2] *Synopsis,* s.v. *Subdiaeoniis.*

[3] The text in *Decreta Authentica,* Vol. VI, Appendix I (1912), differs slightly from its original form as printed in *Periodica,* 1911, p. xxo.

the latter, having removed the veil and pall, presents the prepared chalice to the deacon, who offers it to the celebrant. It seems clear that a pro-subdeacon must not prepare the chalice at the *sedilia·,* he carries the chalice and paten with the host to the celebrant and deacon seated there, and the deacon pours in the water and wine.

The only question, therefore, is whether a pro-subdeacon should at the offertory present the prepared chalice to the deacon. We have found no discussion of the point amongst the writers on the subject, but we think he should not do so since the Ordination rite describes one of the duties of the subdeacon to be: "Calicem et Patenam in usum sacrificii eidem (diacono) offere".

47.—Missa Cantata: Incense and Servers

What is the rule concerning the use of incense at "Missa Cantata', i.e. a sung Mass without deacon and subdeacon ?

The rule is that the incensation at the accustomed places in a solemn Mass is not permitted in a *Missa Cantata* without a special induit. This rule has often been stressed by the *Congregation ofRites,* and a negative reply was given to a Spanish bishop in 1884, who pleaded a local custom which could not be discontinued without offending the people.[1] An induit, it appears, is very easily obtained, and the faculty is often included, with various limitations, in the quinquennial faculties of Ordinaries and in the faculties issued by *Propaganda* for missionary countries. *Facultates Apostolicae quas S.C. de Propaganda delegare solet Ordinariis Missionum,* art. 1, n. 7: "Permittendi thurificationem in Missis cantatis a solo celebrante absque ministris, dum-modo duo saltem clerici supcrpellicco induti Missae inserviant."[2] The quinquennial faculties given to American bishops contain it under the section from the *Congregation ofRites,* n. 9: "to permit the use of Incense in a *Missa Cantata* without deacon and sub-deacon". A later edition of the same faculties continues, "but only on feasts that are doubles of the first and second class, on Sundays, and when the sung Mass is celebrated before the Most Blessed Sacrament of the Eucharist solemnly exposed".[3] The faculty, if obtained by the Ordinary, is communicated to the clergy in their *pagella* of faculties, or promulgated in some other way as in *Liverpool Synod,* 1934, n. 120.

Is a sung Mass without sacred ministers permitted if the priest has only one server? O'Connell, "Celebration of Mass", III,p. 208, *in bis description of the rite assumes that there are two servers.*

The rubrics and official decisions about the sung Mass with no sacred ministers are meagre, and the rubricians are not always in agreement in describing the rite. It is a celebration with some solemnity, and the writers therefore assume that at least two servers will be assisting; J'.R.C., n. 3059.7, is sometimes quoted for the toleration of two servers: ". . . quoad Missas

[1] June, 1884, η. 3611, 6.
[1] Vromant, *Commentarium,* 1926 and 1930.
• Eng. Tr. given by Bouscaren, *Digest,* I, p. 69; II, p. 13.

Parochiales vcl similes dîcbus solemnioribus, ct quoad Missas quae celebrantur loco solemnis atque cantatae, occasione rcalis atque usitatae celebritatis et solemnitatis, tolerari posse duos Ministros Missae inservientes. . . Certainly the sung Mass can be brought within the terms of this direction, and it would follow therefore that one server suffices. Fr. O'Connell on p. 204 notes that the use of more than one server is permitted at a sung Mass, thus teaching by implication that more than one is not obligatory.

48.—Chant: The Proper

***If** the choir is unable to sing the Proper, even on a monotone, may it be omitted altogether or sung by the celebrant himself?*

Caerem. Epp., I, xxviii, 6: Sed advertendum erit, ut, quandocunquc per organum figuratur aliquid cantari, seu responderi alternatim versiculis Hymnorum, aut Canticorum, ab aliquo de choro intelligibili voce pronuntietur id, quod ob sonitum organi non cantatur. Et laudabile esset, ut aliquis cantor coniunctim cum organo voce clara idem cantaret. Cf. also *Motu Proprio,* 22 November, 1903, III, 8.

J'.R.C., 22 May, 1894, n. 5827.2: Ea, quae cantorum schola exequi alternatim debet, nunquam esse omittenda; sed vel per integrum cantanda, vel si vocibus iungantur Organa partim concinenda, partim sub Organis clara voce legenda, prout Caeremoniale Episcoporum praescribit; Symbolo excepto, quod per integrum, si recurrat, semper canendum erit.

8 August, 1906, n. 4189.1: Quando organa pulsantur, si praedicta, nempe *Graduale, Offertorium* et *Communio* non cantentur, recitanda sunt voce alta et intelligibili, iuxta mentem Caercmonialis Episcoporum. Cf. nn. 2994 and 3108.

The directions of the above texts are not meant as the normal, still less as the ideal, method of rendering the Proper at a sung Mass. The chant may be executed (in more than one sense of the word) in this way whenever it is not possible to sing it exactly as the *Graduale* prints it. Happily, we think, the method of alternating chant and organ is not common in this country; it is more usual for at least one singer to chant the text on a monotone, a practice which has the full approval of the Holy See; moreover, the text may be merely recited, audibly and intelligibly, instead of being sung on a monotone. It must be observed, however, that the practice is tolerated only when there is an organ playing, and that the *Credo* may never be rendered in this way.

The reason for these very liberal provisions is the desire of the Church for a sung Mass, if it is at all possible, since the chief difficulty is the Proper. But there is no justification for pushing these concessions still further, and permitting the celebrant himself to take the office of cantor at a sung Mass. We can find only one writer who is prepared to sanction this practice, provided the chant or recitation is not done at the altar but at the *sedilia'. l'Ami du Clergé,* 1928, p. 542; two years later, 1930, p. 112, a decided negative was given by that journal to an exactly similar question, and without any exception being made for the priest performing the office of cantor at the *sedilia.* The rubrics for the sung Mass, except for the final blessing, direct

the priest to recite everything in a subdued voice. If the assistance of the faithful is so meagre that not even one person can be found able to read the Proper aloud, it seems to us that the priest must be content with low Mass.

The replies quoted above mention only the Gradual, Offertory and Communion chants. From canon 20 the directions may be applied to the other parts of the Proper, and the commentators generally explain them in this sense. Cf. O'Connell, *Celebration of Mass,* III, p. 5o.

49.—Chant: Intonations and Introit

Is if obligatory for the priest's chant of the "Gloria" and "Ite Missa Est" to correspond with the plain chant Mass sung by the choir?

It preserves the unity of the chant if the celebrant intones the *Gloria* corresponding to the text sung by the choir, and the *Ite Missa Est* corresponding to the *Kyrie* of the same Mass; unity is required, in principle, from n. 11, a, of Pius X's *Motn Proprio'. "Kyrie Gloria Credo,* etc., in Missa unitatem praescierant sui cuiusque textus propriam. Non itaque licet ea partibus separatis componere . . ." But the text of the Vatican Gradual itself permits alternative chants for the celebrant which do not correspond with the rest of the Mass. Also, 5.R.C., n. 3421.1-3, directs the *Gloria* and *Ite Missa Est* to be "in tono de B.V.M. quoties Praefatio de Nativitate Domini dicenda est". Accordingly, there is no strict rule that the celebrant's chant must correspond to the pieces sung by the choir.

May the choir sing the Introit during the progress of the celebrant to the altar, whenever a sung Mass is notpreceded by the Asperges?

Caerem Epp., II, viii, 30: Cum vero Episcopus pervenerit ante infimum gradum altaris . . . facit confessionem iunctis manibus. . . . Interim cessat sonitus organorum et chorus incipit Introitum.

5.R.C., 14 April, 1753, n. 2424: An a cantoribus in choro incipi possit Introitus missae priusquam sacerdos eandem missam celebraturus ad altare perveniat. *Pesp.* Negative et amplius.

Graduale Romanum (Ed. Vaticana, 1907) De Ritibus Servandis, n. 1: Accedente Sacerdote ad altare, incipiunt Cantores Antiphonam ad Introitum....

The Introit is obviously, in its origins, a processional chant meant to be sung whilst the clergy arc approaching the altar. The psalm was reduced to one verse by at least the eleventh century because, as seems a likely explanation, there was no reason for continuing it once the procession had arrived at the altar.[1]

But the more primitive use in ecclesiastical rites may never be reintroduced without authorization, even though it is considered more reasonable and preferable. The common interpretation of the rubrics, based particularly on the express ruling of 5.R.C., n. 2424, is that the Introit may never be sung until the celebrant has arrived at the foot of the altar. This is the Roman custom, even at a papal Mass, when there occurs a solemn entry

[1] Fortescue, *The Mast,* p. 219.

from the chapel where Terce has been recited. Many think that the reason for the practice lies in the fact that the *Confiteor* and other prayers have been said for centuries at the foot of the altar, whereas they were originally said before arriving there. The Introit is preparatory in character and is now subject to the same rule.

Nevertheless, the rubric of the Vatican Gradual clearly directs that the Introit is sung whilst the priest is approaching the altar, and the question is whether this comparatively new rubric modifies in any way the rule which was certainly obligatory up to 1907, or whether it is to be interpreted in accordance with the pre-existing rule.

The majority of liturgists, as far as we can ascertain, hold that the Vatican Gradual introduced no change. They have good reasons for this view, and a writer in *Ephemerides Eiturgicae* states with truth: "talis est praxis romana et omnium ecclesiarum".1 But these writers, in dealing with the text in the Vatican Gradual, are forced to give it a meaning which the words, as they stand, do not convey. They say that "accedente" means "perveniente", and "altare" means "ad gradum altaris". It is our opinion that those who framed the rubric in the Vatican Gradual had no intention of reverting to a more primitive custom, and that if further direction were to be sought from Ô'.R.G, the ruling would be that the Introit should not be sung till the priest has reached the foot of the altar.

In the meantime, those who wish to interpret the rubric of the Vatican Gradual according to the plain meaning of words are entitled to do so, saving the authority of local Ordinaries who may issue directions for those subject to them. There is sufficient authority amongst the writers to justify the practice. Fortescue: "Lately the rule was not to begin the Introit till the celebrant was at the altar, whereby its meaning as the processional psalm was destroyed. Now the Vatican Gradual has restorea the old idea; the Introit is to be sung whilst the celebrant goes to the altar."2 Hodum: "Nota secundum novas rubricas in Graduait Romano insertas, Introitum cantari debere non ingresso celebrante sed accedente sacerdote ad altare. . . ."3 A writer in *Questions Liturgiques et Paroissiales,* 1934, p. 108, entirely in favour of a literal understanding of the text in the Vatican Gradual, argues that it is directive, not preceptive, in much the same way as other rubrics concerning the number of cantors for the singing of the Alleluia and Gradual: the express ruling of the *Congregation ofPJtes* in 1753 is considered to be abrogated by the later text of 1907, as provided for in canons 17 and 22 of the Code, and the rubric of *Caeremoniale Episcoporum* is held to apply only to the Pontifical Mass.

50.—Communion Chant

Inasmuch as the Communion antiphon originated as a chant during the distribution ofHoly Communion, is there any reason why it should not be sung whilst Holy Communion is being distributed to the people during a sung Mass? The practice is to defer it until the distribution ofHoly Communion is completed. Is there any direction ordering it to be so deferred?

1 *hu et Praxis,* 1938, p. 126.
* *0f>. cit.,* p. 224.
' *Collationes Brugenses,* 1937, p. J9> note.

The origin of the chant was certainly as described. "The rite of Communion was, especially in early ages, a very long and complicated thing. Meanwhile the choir sang. It is the same idea as at the Introit and Offertory.

. The Communion was a psalm with *Gloria Patri* and an antiphon before and after it. Down to the twelfth century all allusions to it show this. Then it was postponed until after the Communion, probably because the *Agnus Dei* took more time. So Durandus notes that this chant is often called *Post-communio.* About the same time it was gradually shortened, a result of the lessening of the number of communicants at a sung Mass."1 Popular explanations of the Mass2*recall, as a matter of antiquarian interest, that the Communion antiphon used to be sung whilst Holy Communion was being distributed. They take for granted that it is so no longer.

But there is really no reason for deferring the chant until the end of the Communion; the present writer can find no direction anywhere ordering this to be done; on the contrary, it appears more correct to sing the chant during the Communion. Often, no doubt, this is not possible when the singers are also communicating, and it is the exception for the faithful to communicate during a sung Mass because it is usually at a late hour. But the Communion chant may be sung, if desired, at this time.

The rubric in the Missal is as follows: "Si in Missa sollemni fiat Communio, omnia serventur, ut supra, sed prius communicet Diaconum et Subdiaconum, deinde alios per ordinem: et Diaconus purificationem eis ministrat. Interim a choro cantatur Antiphona quae dicitur Communio."8 There is no reason for restricting the word "interim" to the purification. The rubric of the Gradual has, perhaps, encouraged the practice of deferring the singing: "Sumpto Sanctissimo Sacramento, cantatur a Choro Antiphona quae dicitur Communio, intonata ab uno, duobus aut quatuor Cantoribus, ut ad Introitum dictum est."4* The direction "sumpto, etc." refers to the celebrant and not to the rest of the faithful, as may be deduced from an equivalent rubric in the *Caeremoniale Episcoporum*: "Episcopus vero, tersis manibus, deponit mitram, legitque communionem ex libro, quae etiam cantatur a choro post Agnus Dei, postquam Episcopus sumpserit communionem."6

De Herdt supports this interpretation: "Communio cantanda est non ante nec infra, sed immediate post sumptionem S. Sanguinis, infra purificationes, vel infra distributionem communionis, si fiat."0 "Communio ita dicitur, quia sicut olim, sic etiam nunc cantatur infra communionem populi, si fiat infra Missam. . . . Quando olim infra communionem populi cantabatur, psalmus addebatur; cessante autem frequenti populi communione, et multiplicatis missis privatis, sub quibus communio non distribuebatur, sola antiphona ad communionem reservata fuit."7 If there are a large number of communicants, De Herdt permits the singing of psalms and hymns in honour of the Blessed Sacrament, in addition to the proper antiphon. Λ decree, J.R.C., 14 January, 1898, forbids the singing of

1 Fortescue, T2m Alar/, p. 386.
' E.g., O'Brien, *A History of the Mass,* p. 387.
• R/7. *Celebr. Miss.* X, 9.
4 *De Ritibus Servandis in Cantu Missae,* IX.
• II, viii, 78.
• *Praxis Pontificalis,* Π, §191.
' *Sacrae Liturgiae Praxis,* II, §118.

hymns in the vernacular whilst Holy Communion is being distributed during a solemn Mass, but Latin chants arc permitted, and the most suitable would be the psalms which used to accompany the Communion antiphon. Traces of them still exist in the Missal, as in the sequence of psalms during Lent, or they could be discovered from liturgical sources.

§3. REQUIEM MASS

51.—Requiem Mass in Oratories

The rubric "De Missis Defunctorum" {Addit, et Variat. III, 6) *says: "In die iii, vii, xxx et anniversaria ... in qualibet Ecclesia . . ." Does this phrase include semi-public oratories? The reason for questioning this is that in the previous section (III,* 5) *a distinction is made between "ecclesia" and "oratoria semipublica".*

We think that the meaning of "in qualibet Ecclesia" in this rubric is to include oratories and semi-public oratories. In the previous n. 5, dealing with the faculty of saying a Requiem Mass in various edifices on the occasion of decease or burial, different rules are made for churches and for oratories public, semi-public and private. In n. 6, on the contrary', the rule is for every church, and therefore implies that there is no distinction between them. Certainly, by relying on the strict meaning of words, n. 6 would have to be restricted to buildings which come within the definition of "ecclesia", but there is ample authority amongst the rubricians for interpreting it in the wider sense: Croegaert, *De Rubricis Missalis* (1935), p. 222, quoting *Ephemerides Liturgicae,* 1922, p. 380; *l'Ami du Clergé,* 1925, p. 734, quoting Brehm, *Synopsis Additionum,* p. 199.

52.—Requiem Mass in Cemetery Chapel

What privilege, if any, is enjoyed by a cemetery chapel for the celebration oj Requiem Masses on days when such are permitted by the rubrics in other churches?

These chapels have permission for Requiem Masses as directed in *Addit, et Variat.,* III, 8: "dummodo non occurrat Dominica, aut Festum de praecepto, licet suppressum, Duplex I vel II classis, etiam translatum, aut aliqua cx feriis, Vigiliis, vel Octavis privilegiatis". Privileged ferias are Ash Wednesday and the first three days of Holy Week; vigils are those of Christmas, Epiphany and Pentecost; octaves are those of Christmas, Epiphany, Easter, Ascension, Pentecost, Corpus Christi and the Sacred Heart. The days correspond to the exceptions in III, 6: "In die iii, vii, xxx et anniversaria ab obitus vel depositione". Induits may be obtained extending the concessions of the Missal rubrics.

For the purpose of this direction, those churches or chapels are excluded: (a) which arc not attached to a cemetery, even though bodies are buried

within them; (b) those which were formerly cemetery chapels, but are no longer strictly such owing to funerals no longer taking place there; (c) those which, though surrounded by a cemetery, are in use for choral offices or for the care of souls.

53.—Requiem Mass Formula

Is there an obligation to say "Missa Quotidiana de Rjqtiie," when permitted by the rubrics, if the Mass is for a deceased person?

There is an obligation to say a Requiem Mass, if the donor of the stipend has so stipulated. Canon 833: "Praesumitur oblatorem petiisse solam Missae applicationem; si tamen oblator expresse aliquas circumstantias in Missae celebratione servandas determinaverit, sacerdos eleemosynam acceptans, cius voluntati stare debet." If the offering is transferred to another priest, the obligation is transferred with it.[1]

If die donor has made no stipulation, the obligation is fulfilled by saying the Mass of the day. 5.R.C., 13 June, 1899, n. 4031.4: "Sacerdos cui erogatur eleemosyna ad celebrandam Missam pro uno vel pluribus defunctis . . . satisfacitne obligationi suae Missam faciendo Officio conformem, cum aliunde petitam Missam ritus diei non permittat, dummodo applicet iuxta intentionem dantis eleemosynam? *Kesp.* Affirmative, sed consultius est, ut quantum fieri potest, intentioni eleemosynam erogantis satisfiat per Missam ... de Rcquie." A later question which mentioned the fact, beyond all doubt, that the donor had not expressly asked for a Requiem Mass was answered by a reference to the decree just cited.[2]

Whether it is more fitting, although not of obligation, to say a Requiem Mass in these circumstances, is decided affirmatively in the latter part of the decree: "consultius . . . quantum fieri potest". We think it must be left to the priest to decide for himself whether, in any given instance, it is advisable. The liturgically-minded people, especially in places where Requiem Masses occur, perhaps, to excess, are in favour of saying the Mass of the day, so as not to be deprived of the special prayers and lessons appointed by the Church. This preference would apply particularly to Lent, when a priest may rightly prefer to say the proper Mass even though free to say a Requiem Mass on one day of the week. But on days when the appointed Mass is a very familiar Common it is preferable to say a Requiem Mass, in our opinion. There can be no rigid rule about the matter, since "quantum fieri potest" is sufficiently wide to take in other considerations besides the permission of the rubrics. The day might be a festive occasion, when black vestments would appear quite out of place.[8]

If the intention is for someone living, may one nevertheless say the "Missa Quotidiana"?

1 Cf. *S.C. Coru.,* 16 April, 1921, which applied this rule to a novena of Masses or to Gregorian Masses.

1 ii April, 1902. 15. It is not in the *Décréta Authentica.* Cf. Croegaert, Di *Rubricir Mitralis,* p. 242.

• Cf. *Q.liutions Diturgijucj et Parvitrialer,* 1921, p. 65.

An affirmative reply, J.R.C., 13 October, 1856, is sometimes quoted, though it is not in the *Décréta Authentica,* but there can be no doubt that the obligation is satisfied by applying the Mass, no matter what the text of the Proper may be, unless the donor has expressly stipulated that it shall be of a particular kind. The reason is that saying Mass for someone means applying the ministerial fruit for the intention desired, and this fruit is the same no matter in what form the Mass may be said. Thus Cappello, *De Sacramentis,* §690, ad 3, and all the writers.

Nevertheless, on analogy with the decision, n. 4031, quoted above, it is more fitting not to say a Requiem Mass when the intention is for the living.

54.—Orationes Pro Defunctis

Wbat is the meaning to be given to "congregatio" in the second prayer oj the "Missa Quotidiana" ? May the prayer "pro parentibus" be used if they were non-Catholics ?

(i) The prayer *Deus veniae largitor* was originally found in monastic missals dating at least from the eleventh century, and referred in its original context to a Benedictine family or community. "Congregatio" has this meaning in the *Rule of St. Benedict,* as at the end of cap. iv, and in the title to cap. Ixiii, "De ordine congregationis". Etymologically it can mean any assembly or group, a flock gathered together. The prayer has been in the Roman Missal since the fifteenth century, and persons reciting it may now give any meaning they choose to the word "congregatio", e.g. the people present, the parishioners, the members of a college. This is the explanation given by a writer in *Ephemerides Eiturgicae,* 1928, p. 47. β ξ Y

(ii) From canon 2262, §2, one may deduce that Mass may be offered "privatim ac remoto scandalo" for non-Catholics. It would therefore seem evident that a prayer for them within the Mass is certainly permitted with the same reservations.

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55.—Communion before Requiem

Holy Communion is distributed before a Requiem Mass, should the blessing be given at the end ?

Rituale Romanum, Tit. iv, cap. ii, n. 13: . . . omissis tamen semper *alleluia* et benedictione in fine, si paramenta nigri coloris adhibeantur. S.R.C., 26 November, 1878, η. 3465, directed that the appropriate versicle and prayer arc to be said, in these circumstances, during Paschal time, but the *Alleluia* omitted as the rubric of the Ritual determines.

If distributed whilst not vestedfor Mass on AH Souls' Day, wbat colour should the stole be ?

S.R.C., 19 April, 1912, n. 4289: Utendum colore violaceo, aut albo. Of the two *Rituale Romanum,* Tit. iv, cap. ii, n. i seems to prefer the first:

"stola coloris semper albi vel Officio diei convenientis (mutato tamen colore nigro in violaceum die Commemorationis Omnium Fidelium Defunctorum)".

56.—The Benedictus Chant

In sung Requiemsit is the cssstom in many places to sing the "Benedictus" immedately after the "Sanctus", so that the whole chant isfinished before the elevation, and the period between the elevation and the "Pater Noster" is left freefor a motet. Is this correct?

This was certainly the custom in the past, and it appeared to receive some approval from a rubric in the 1907 edition of the Vatican Gradual, n. 7: "Finita Praefatione Chorus prosequitur *Sanctus,* etc. Dum autem elevatur Sacramentum, silet Chorus et cum aliis adorat". The *Congregation of Rites,* however, 14 January, 1921, n. 4564, directed this rubric to be changed and to be printed as follows in future: "Finita Praefatione Chorus prosequitur *Sanctus,* etc., usque ad *Benedictus qui venit,* etc., exclusive: quo finito, et non prius, elevatur Sacramentum. Tunc silet Chorus et cum aliis adorat. Elevato Sacramento, Chorus prosequitur cantum *Benedictus."* The decree proceeds: "Haec autem Rubrica inviolabiliter observetur, quibuslibet contrariis non obstantibus, in omni Missa cantata tum vivorum, tum defunctorum, sive cantus gregorianus, sive cantus alterius cuiusvis generis adhibeatur."

57.—Funeral Pall

Is it necessary for the coffin, during a funeral Mass, to be covered with a pall? If so, are there any directions concerning the colour?

The pall is customary, and where the custom exists it should be followed, according to the teaching of the writers on the subject. But there is no explicit direction, so far as we are aware, making the use of a pall obligatory in places where it is not customary.

If it is used, the colour for adults must be black. There are several decrees of the *Congregation of Rites* forbidding the use of a white pall, as a sign of virginity, in the case of unmarried girls. The most recent decree insisting on black is dated 4 August, 1905, n. 4165.5: "Colorem panni emortualis esse debere nigrum, ornamenta autem sobria esse oportere." The sober ornamentation may be purple or gold or, what is most effective and suitable, a deep yellow, the colour of unbleached wax. The ornamentation usually takes the form of a large cross stretching across the whole length and width of the pall. It is fairly clear, therefore, that the pall of violet colour, sometimes provided by non-Catholic undertakers, is wrong. Only in the case of children who have died before coming to the use of reason should the pall be of white. Some sanction the use of the national flag, instead of a pall, for soldiers and sailors, and this custom mav be followed.

§4. VARIOUS RUBRICS

58.—Asperges: Method of Sprinkling

What is the correct procedure for this rite: to sprinkle the people from the altar rail, or by passing along the aisles? In the latter case, on which side should the celebrant begin?

Rituale Romanum, Appendix I, gives no specific directions on the point raised: interim celebrans aspergit clerum, deinde populum.

Cacrem, Epp., II, xxxi, 3: . . . deinde Canonicos, Bénéficiâtes, et clericos ex utraque parte chori, omnesque alios in choro permanentes, et populum asperget.

J\R.C., 27 September, 1698, n. 2013.4: . . . populum demum a sacerdote ter, scilicet in medio, a dextris et a sinistris aspergendum.

7 December, 1844, n. 2867.1: An celebrans diebus Dominicis chorum aditurus ad aspergendum clerum aqua lustrali, accedere debeat per latus Epistolae atque circulum perficiens post aspersionem redire debeat ad altare per latus Evangelii, vel potius ire ac redire debet per latus Evangelii? Rfj·/). Affirmative ad primam partem; Negative ad secundam.

22 March, 1862, n. 3114: An tolerari possit mos in multis ecclesiis existens, quo sacerdos ante Missam Convcntualcm graditur per ecclesiam, incipiens a part Epistolae et rediens per partem Evangelii, interim aspergens populum cum aqua benedicta? An potius aspersio aquae benedictae facienda omnino sit per sacerdotem stantem in aditu sanctuarii, et inde ter populum in medio, a dextris et a sinistris aspergentem? *Resp.* In casu servandam consuetudinem.

12 September, 1884, n.3621.4: Diebus Dominicis aspersio aquae benedictae super populum fierine debet a Celebrante extra chorum gradiente usque ad ianuam ecclesiae; vel a choro conversus ad populum debet aspergere populum, iuxta praescripta tum in Cacremoniali Episcoporum, tum in Decretis? *Resp.* In Dominicis apersio populi cum aqua benedicta facienda est a sacerdote ad cancellos presbyterii; juxta Decreta alias edita.

These are the only official directions, of which we are aware, explanatory of the method of blessing the people, though there are others dealing with the choir, precedence, genuflexions, etc. It will be seen that the normal rule docs not provide for walking round the church in order to bless the people—they arc blessed from the altar rails; but the custom, where it exists, should be retained: inasmuch as n. 3114 permitting this use still remains in the authentic collection, it cannot be said that it is revoked by n. 3621. Whether it is or not, the commentators we have been able to consult tolerate cither method.

If the method of sprinkling from the altar rails is maintained, there is some little uncertainty as to which side shall be sprinkled first. Does "a dextris" in this text mean to the right of the celebrant, which would be the gospel side, or to the right of the people, which would be the epistle side? *l'Ami du Clergé,* 1928, p. 527, and some others prefer the gospel side first; Fr. O'Connell interprets it to mean the epistle side first1; others,

1 *CtkbraSion of Mass.* Ill, p. 9.

more prudently, simply translate the rubric "to the middle, to the right and to the left". Either method may be followed.

We arc of the opinion that, in passing down the church, the aspersion should be first on the cpisde side, as is clearly indicated in n. 3114. The instruction in n. 2867 is a bit puzzling, since the alternative, which is forbidden, consists in going and returning on the gospel side. The explanation, no doubt, is that the ministers being on the gospel side, in order to sprinkle the presiding prelate, were accustomed to pass up and down the choir on that side only. Whilst admitting the explanation that the celebrant sprinkles towards his left because the clerk is on his right with the holy water, we think that there is, perhaps, a more natural explanation still. It is a natural movement to sprinkle in this way (at least for the normal right-handed person). An effort to sprinkle on the right is rather ungainly and difficult unless it is done, as it were, with a back-handed movement, which would appear to be unseemly.

Fr. O'Connell recommends that, if the priest goes down the middle aisle and returns the same way, he ought to sprinkle the people on each side alternately on the way down, and return with joined hands, since it is unbecoming to sprinkle people on the back unseen by them. In a large church, however, when the celebrant passes around it, through the side aisles, beginning on the epistle side and returning on the gospel side, this unbecoming action cannot be avoided.

59.—Asperges in Convent Chapels

On appointment as chaplain to a convent school, I found that the community were accustomed to sing the Asperges before a low Mass on Sunday. Am 1 right in holding that this is incorrect: first, because it is not in a parish church: and, secondly, because it is notfollowed by a sung Mass ?

S.R.C., 15 December, 1899, n. 4051.1: Utrum in Ecclesiis Collegialibus aspersio aquae benedictae de praecepto sit praemittenda Missae Conventual! quae canitur in Dominicis, sive cum Diacono et Subdiacono, sive absque sacris Ministris ? Et utrum in Ecclesiis non Collegialibus eadem aspersio praefatis diebus fieri saltem possit ? *Resp.* Affirmative ad utramque partem.

By the common law of the Church the Asperges is obligatory on Sunday before the conventual Mass in cathedral and collegiate churches. Elsewhere it is not obligatory except by a particular law, e.g. in England the bishops require it in all parish churches.

Though not obligatory it is always permissible in other churches before the principal Mass. TheJ.R.C. states that it is permitted "in Ecclesiis non-collegialibus", without any restriction, and the writers on the subject deduce that the phrase includes oratories. In fact, the Ritual regards it as the normal practice before the Sunday Mass; and De Herdt says: "in dominicis pertinet ad missae principalis caeremonias".1

It is therefore irrelevant whether the chief Mass is sung or not. The *Memoriale Rituum,* for example, directs it on Palm Sunday and 2 February, which may fall on a Sunday, it being taken for granted that the Mass following is a low Mass.

1 *Sarrae Ufurgiae Praxis*, III, §132..

60.—Asperges Before Requiem

What is the correct procedure for the Asperges, when by special permission the principal Mass is a Requiem ?

S.R.C., 31 August, 1872, n. 3268. 1 and 2: Aspersionem . . . fieri debere, iuxta rubricas Missalis et praescriptum a Rituali Romano, omnino post Tertiam ante Missam Convcntualcm; ideoque tolerari non posse consuetudinem eam transferendi post Nonam ante Missam votivam SSmi Sacramenti ... si legitima adsit consuetudo canendi Missam Dominicae vel Festi post Nonam . . . tunc aspersio fieri debet post Nonam ante Missam.

Rs/br. Missalis and *Rituale Romanum,* De Benedictionibus, I: Sacerdos celebraturus, indutus pluviali coloris Officio convenientis, accedit ad altare. . . .

(i) Though not obligatory in parish churches from the common law, in England the bishops require the Asperges in these churches, "prout in Missali praescribitur".

From innumerable decrees of the *Congregation of Rites,* explained by the writers,[1] the Asperges must in principle be given before the chief Mass on Sundays, by the celebrant of the Mass, vested in stole and cope corresponding with the colour of the office.

(ii) In conventual and cathedral churches there will be no difficulty on the occasions when a Requiem is ordered on a Sunday: following the rule of n. 3268, the Asperges will take place before the Mass of the Sunday, even though a greater concourse of people will, perhaps, be present at the votive Requiem.

In parish churches where more than one Mass is celebrated, one may hold the view that the principal Mass is the Mass applied by the parish priest *pro populo*—the parochial Mass in one of the senses of this term. The Asperges will then precede this Mass, which, on analogy with n. 3268, should more correctly be the Mass of the Sunday. Or one may, alternatively, hold the view that the parochial Mass, the principal Mass, on this Sunday at least, is the special votive Requiem.

In churches where there is only one Mass and a votive Requiem legitimately takes the place of the Mass of the Sunday, there can happily be no dispute about it being the principal Mass. We know of no reason why the Asperges should not precede it, except the anomaly of praying for the living, apart from prayers in the *Ordo Missae,* vested in black. Anomalies of this kind must be expected, inasmuch as a Sunday votive Requiem is an anomaly. The only reference we can find to the difficulty is in *I'Ami du Clergé,* 1912, p. 208, which recommends violet vestments for the Asperges when it precedes a Requiem.

Failing any directions from the Ordinary, there remains a third alternative which is often advised in all cases of perplexity arising from conflict between two laws: the Asperges may be omitted altogether, on a principle of *epikeia.*

[1] E.g. O'Connell, *Celebration of Mats,* III, p. 5; *Ephemerides Uhtrpcat,* 1925, p. 276.

If the titular is omitted for various reasons, should the name of St. George be recited in its place in the Missal prayer, "A cunctis" ?

The induit by which the name of St. George was mentioned in the prayer *A cunctis,* in place of the titular as directed by the rubrics, may be seen in Appendix X to the IVth Westminster (Diocesan) Synod. It is dated 24 May, 1863, and was conceded in order to remove doubts concerning a previous decree of 1749, and because there were very few consecrated churches in England with a titular. The rescript directed that the name of St. George alone was to be mentioned, except in the case of regulars who could add the name of their founder, and the induit was to continue "donec S. Sedes declaraverit propter mutata Angliae adiuncta decreta ordinaria esse observanda". The Holy See has since decided, in a rescript of i December, 1938, that the time has come for observing the common liturgical law, and the name of the titular is restored.[1]

The former use had at least the advantage of great simplicity. The use of the titular's name offers no difficulty in the majority of cases, but doubts will occasionally arise as to the correct observance of the lengthy rubric found at the prayer in *Orationes Diversae,* n. *z,* of the Roman Missal. The following notes are restricted to this rubric of the Missal, since in the equivalent prayer of the Breviary the rule is not precisely the same.

(i) From canon 1168, §1, every church which is consecrated or blessed must have a titular, and the divine offices may not be celebrated therein until the building is at least blessed. The blessing is that contained in the *Rituale Romanum,* Tit. viii, cap. xxvii, and the rite presupposes that the church has a titular. Public oratories are subject to the same law as churches from canon 1191, §1. Domestic or private oratories may not be consecrated or blessed in the manner of churches. Semi-public oratories may be blessed with the rite in the Ritual, and it is fitting that the more permanent ones should be, but this solemn blessing is not of strict obligation: the *Benedictio Loci* may be used, as implied in canon 1196, §2, and as the writers commonly teach.[2] The distinction between these various classes of oratory is clearly noted in canon ri88.

Accordingly, in the case of private or domestic oratories, and of semi-public oratories which have merely received the *Benedictio Loci,* and not the constitutive solemn blessing of the Ritual, the question of the titular to be mentioned in the *A cunctis* does not arise, since they have none.

(ii) In churches or oratories which have a titular, the rule requiring a mention of the name is subject to the following exceptions:

(d) It is omitted if the titular is a Divine Person or a Mystery connected with Our Lord, c.g. the Holy Ghost, the Sacred Heart, the Transfiguration. The reason for this is that the word "intercedente" which precedes the various names in the prayer is not applicable in these instances.

(Z>) It is omitted likewise if the Mass happens to be of the titular or containing a commemoration of the same, the reason being that the same

[1] *Tbt Cltrgy* XVH, 1939, p. 77.
[2] Coronata, *Institutions,* Π, §767, c. Cf. Q. 356.

saint or angel should not be invoked twice. It is on this principle that we arc given an alternative formula of *A cunctis* when there is a Mass or commemoration of Our Lady.

(ii) For the same reason it is omitted if the name is already mentioned in the *A cunctis* prayer. Thus it is always omitted in churches dedicated to Our Lady.

(iii) In certain cases a question of precedence in naming the titular arises, which the rubric provides for on the basis of the relative position of the names in the Litany of the Saints. We are directed, accordingly, to name angels and St. John the Baptist immediately before St. Joseph. The prayer would then read: "... Dei Genetrice Maria, cum beato loanne Baptista, beato loseph, atque beatis Apostolis tuis Petro et Paulo et omnibus sanctis . . ."

(iv) In all cases in which, according to the above rules, the name of the titular is omitted, we are of the opinion that the name of some other saint, e.g. the patron of the country or town, should not be put in its place, unless the practice is justified by a lawful custom. Confusion has arisen from the practice of using the word "patron" as a synonym for "titular", as may be seen in certain replies of 5.R.C.; the two are now quite distinct, as in canon 1168, dealing with the titular, and canon 1278, dealing with the patron. Also certain replies, as the one for Prague, n. 4055.3, direct that the patron's name be included, but it is not obligatory; others, as that for Bruges, n. 2814.1, direct that the local patron must be named in oratories which have no titular; others, as n. 4193.9, permit the naming of the local patron, if the titular is not named, provided there is a custom of so doing. This n. 4193.9 is the latest direction, dated 23 November, 1906, and it applies the rule of n. 4043.8 in a decree regulating the *A cunctis* in the Office, which states: "Praeter commemorationem de titulo seu Patrono Ecclesiae (et regulares etiam de proprio Fundatore) nulla de Patrono loci, vel Dioeceseos, Provinciae aut regni, vi Rubricae facienda est, nisi contraria vigeat conscutudo."

(v) From5.R.C., nn. 3417.3 and 405 5.3, a church may have more than one titular, and they each enjoy the privileges accorded by the rubrics, including a mention in the prayer *A cunctis,* unless they are to be omitted according to the rules already outlined. Thus, if the titular is "Sacred Hearts of Jesus and Mary", neitheris mentioned; if it is "SS. John Fisher and Thomas More", both are mentioned; if it is "Our Lady and St. Edward", the latter alone is mentioned.

62.—"A Cunctis": Founder's Name

In reciting this prayer regulars are accustomed to add the name of their religions founder to that of the name of the saint reauired by the rubrics', occasionally they substitute the founder's name in place of the latter. Putting aside all cases in which a special induit has been obtained, what is the correct liturgicalpractice in this matter?

S.R.C., 2 December, 1891, n. 3758: Regulares (in Missa) in oratione *A cunctis* posse ad litteram "N" nominare proprium S. Fundatorem, dummodo Titularis (si nominari queat) non omittant; servato tamen ordine dignitatis in rubricis praescripto.

14 May, 1926.2: An qui pertinent ad praefatas Congregationes seu Instituta, orationi *A cunctis* addere valeant nomen Patroni praecipui

propriae Religionis, in ecclesia ubi Missam celebrant, post recitatum nomen sancti Titularis eiusdem ecclesiae? *Resp.* Negative sine speciali Induito Apostolico.

(i) There would appear to be, at first sight, a contradiction between the reply of 14 May, 1926,1 and the earlier reply n. 3758. Actually there is no conflict between the two, since the later one refers to the religious "patron" and the earlier one to the religious "founder". The question answered 14 May, 1926, was sent from India by the superiors of the Missionaries of St. Francis de Sales, and there could be no question of their founder, since he was not canonized; the religious desired to apply to St. Francis de Sales the rubrics referring to religious founders, a request which was not granted.2 Very likely this reply is responsible for raising doubts about the propriety of regulars adding the name of their founder. There is clearly no room for doubt, as regards the general principle; regulars are entitled to add their founder's name: in the Office from n. 4043 and in the Mass from n. 3758.

(ii) Some doubts may arise in applying this principle. It may be queried, for example, whether the founder's name should be mentioned by regulars officiating at Mass or Office in churches other than their own. Since the decrees make no distinction or reservation, and the privilege is a personal one, we are of the opinion that the practice of naming the founder may be followed everywhere.3

We can see no justification whatever for *omitting* the titular and replacing it by the founder, nor can we sec any reason justifying this practice in the Office but not in the Mass. From the wording of n. 3758 one may deduce that the inclusion of the founder's name is permissive, not obligatory. For the rest, the whole question is not *materia gravis,* and n. 4043.8 allows for a customary interpretation of the law.

63.—Alternative to "A Cunctis"

Seeing that the "A cunctis" (Orationes Diveversae, n. 2) has the same title as "Concede, quaesumus" (as Q. 61, n. 1), namely "Ad poscenda suffragia Sanctorum", may the latter be substituted whenever "A cunctis" is ordered by the rubrics?

The *Concede, quaesumus* may be chosen for the prayer *ad libitum,* which is occasionally directed by the rubrics. But when the rubric expressly directs *A cunctis* to be recited, one has to use this prayer, and the alternative is not permitted, in our opinion.

An exception to this rule is still permitted by some writers, e.g. Aertnys, *Compendium Uturgiae Sacrae,* §89.6, relying upon 5.R.C., 15 May, 1819, n. 2597.3, which directed that, in a votive Mass of the titular of the Church, the name of the saint was to be omitted from the *A cunctis* or, alternatively, the prayer *Concede, quaesumus* was to be used instead. But, since it is clear from the rubrics of the modern missal that in certain votive Masses of saints the third prayer *A cunctis* is to be said with the saint's name omitted, as in the votive Mass of St. Joseph, other writers, as *l'Ami du Clergé,* 1929, p. 270, think that 5.R.C., n. 2597, is no longer operative.

1 It is not in *Décréta Authentica* but in *A.AS.,* XVIII, 1926, p. jio.
* Cf. *I'Ami du Cltrgi,* 1926, p. 5JI.
l Perioeùca, 1912, p. 16.

64.—"Oratio Imperata" Ceasing

Some hold the view that "oratio imperata pro re gravi" cannot of its nature last indefinitely; otherwise it could scarcely he styled ''pro re gravi". If this view is correct, may priests cease reciting the prayer after it has been said for a month or so?

S.R..C., n. 2613.2: An liceat clerico . . . ab iis recitandis cessare pro lubitu, antequam Ordinarius id iusserit? *Resp.* Negative.

The recitation of this prayer, whether ordered *pro re gravi* or not, ceases when the purpose for which it was enjoined ceases, e.g. if ordered during time of war it ceases when peace is declared. Otherwise it must always be said according to the rubrics in *Addit, et Variat., VI,* 4, as explained by the rubricians. The period during which it is said may certainly continue indefinitely, if the Ordinary so desires, and we know of no authority for the view given above. Cf. *l'Ami du Clergé,* 1920, p. 63; O'Connell, *Celebration of Mass,* I, pp. 185-188.

Does the obligation of reciting at Mass an "oratio imperata" cease with the death of the bishop who ordered it?

Canon 24: Praecepta, singulis data, eos quibus dantur, ubique urgent, sed iudicialiter urgeri nequeunt et cessant resoluto iure praecipientis, nisi per legitimum documentum aut coram duobus testibus imposita fuerint.

Canon 335, §2: Leges episcopales statim a promulgatione obligare incipiunt, nisi aliud in ipsis caveatur; modus autem promulgationis ab ipsomet Episcopo determinatur.

(i) The question is of some general interest, for an *oratio imperata* is an example of an ordinance which is neither a law, since it is lacking stability, nor merely an order placed upon an individual. It is a general precept, the exact notion of which is nowhere dealt with in the Code; but the commentators tend to interpret its meaning as though it were a law in all respects except permanence. Of these canonists the most satisfactory is Ondin: "Praeceptum in casu particulari communitati datum . . . lex vocari non potest, cum doctrina constans hoc nomen semper reservaverit iussioni quae aliqua saltern gencralitatc gaudeat; sed, cum communitati ipsi ac toti detur, quoad vim a lege non differt ac legi aequiparari debet. Solum praeceptum singulare, quod nempe singulis datur, non potest legi aequiparari. Igitur, dum praeceptum singulis datum, ad normam canonis 24, generatim cessat resoluto iure praecipientis et vim personalem semper habet, nisi aliud a praecipiente determinetur, praeceptum commune in casu particulari latum, non secus ac lex, vim non amittit resoluto iure praecipientis. . . . Sane Codex aliter statuere potuisset; sed cum nihil de hac quaestione decernat, ac solis praeceptis singularibus vim personalem agnoscat, haec solutio . . . admittenda est.[1]

The *oratio imperata* will usually have all the constituents of law, except permanence: imposed by one with power of jurisdiction in the

[1] *De Territoriali vel Personali Tegis Indole,* p. 369. Cf. also Van Hove, *De Legibus,* §97; Bestc, *Introductio,* p. 90; Maroto, *Institutiones,* I, §268.

external forum; ordered for the common good and not merely for the private guidance of individuals; promulgated as an authoritative official order in some printed journal or communication. Since, from canon 24, even a personal precept, if given with some legal formality, continues after the prelate's death, still more so, it would seem, does a general precept, unless the contrary is clear from its wording, e.g. "ad beneplacitum nostrum"[1].

Our own view, therefore, is that an order to recite an *oratio imperata* continues to be of obligation until withdrawn by the Vicar Capitular.

(ii) Before the Code there were many who held that not only episcopal general precepts, but even episcopal laws ceased to be of obligation on the bishop's death, unless promulgated in a diocesan synod.[2] From the terms of canon 335, §2, this view about episcopal laws is obsolete.

Since the publication of the Code, inasmuch as its legislation about general precepts is indeterminate, a few manualists will be found who, without arguing the point very thoroughly, hold that they are of obligation only during the life of the prelate.[3]

We have found only one writer who states, though unsupported by any reasons, that the *oratio imperata* ceases to be obligatory after the death of the prelate who has ordered it: *l'Ami du Clergé,* 1921, p. 400. Inasmuch as the legal principles about general precepts are not clearly formulated, one may perhaps follow this opinion, though personally we think it is incorrect.

(iii) In actual practice, the obligation can easily be discovered and all doubts removed by ascertaining the will of the Vicar Capitular. Some suggest that, if a Vicar Capitular imposes a fresh *oratio imperata,* without any reference to the one ordered by the late bishop, it is to be assumed that his intention is to replace the former one, which is thereby removed. Applying the principles on laws, which are the only ones available at the moment for general precepts, we cannot agree; canon 22: "lex posterior, a competenti auctoritate lata, abrogat priori, si id expresse edicat, aut sit illi directe contraria . . Thus a prayer ordered "Ad postulandam serenitatem" necessarily removes the previous one "Ad petendam pluviam" without expressly mentioning it. But two episcopal *orationes imperatae* are permitted by the rubrics; the first one may be held, perhaps, to cease for the reasons given in (ii): "resoluto iure praecipientis"; it will also cease, of course, if the need which occasioned it ceases. Otherwise it remains of obligation until authoritatively removed, as decided by 5.R.C., n. 2613.

65.—Homily on the Gospel

Is there any express law which requires the sermon at the chief Mass on Sunday to be explanatory of the gospel of the day rather than an exposition of some other portion of Christian doctrine ?

(i) Liturgically it is quite evident, from the fact that the sermon at Mass follows immediately after the gospel, that the matter of the discourse

1 Cf. *The Clergy Review,* XXIII, 1943, p. 467.
* Cf. d'Annibalc, *Tbeol. Moralis,* I, §199.
• Cappello, *Summa luris,* I, §102; Chclodi, *De Personis,* §70.

should be on those portions of Holy Scripture read during the Mass. It was the custom of the early Church and has been preserved for centuries.[1]

(ii) Canon 1344, §1: "Diebus dominicis ceterisque per annum festis de praecepto proprium cuiusque parochi officium est, consueta homilia, praesertim intra Missam in qua maior soleat esse populi frequentia, verbum Dei populo nuntiare." The meaning of the words "consueta homilia" is usually taken to be an explanation of the gospel: "Homilia dicitur potissimum pastoralis adhortatio ex explanato textu evangelico deprompta."[2] "Homilia vocatur praesertim concio in qua textus Evangelii explanatur et ex illo exhortationes morales eruuntur."[3] Other canons of the Code, e.g. canons 1332, 1333, deal with a parish priest's obligation to impart a knowledge of Christian doctrine in general. It is therefore implied that the obligation of canon 1344, §1, concerns something more specified and determined, and an indication of this may be seen in a letter sent by the *Congregation of the Council* to the Ordinaries of Italy, 31 May, 1920, which invited them, amongst other things, to say whether all parish priests of their dioceses (a) explain the gospel to the people on Sundays and Holy Days of Obligation, (b) explain Christian doctrine to adults on those same days.[4]

(iii) But this law is widely interpreted, both by the commentators and by custom. The authors quoted above state that the discourse should be chiefly or generally on the Gospel, but it is agreed that the law is observed even though, on occasion, some other subject is taken. *Liverpool Synod,* 1934, n. 215, reflects this interpretation: "Potest quandoque consuetae homiliae, non tamen habitualiter, concio de alia re idonea substitui." Fortescue observes that it is permissible to preach also on the epistle,[6] and many are accustomed to take the collect or some other part of the Proper. Fanfani gives the widest possible interpretation of "homily" in this canon: "in forma homiletica: id est, per modum facilis commentarii ad sanctum Evangelium, vel per modum instructionis et exhortationis super uno vel alio capite doctrinae et moralis christianae".[6]

Our conclusion is that the sermon of the parish priest at the chief Mass on Sundays should normally and habitually be based on the gospel, but it is a very elastic rule and it is permitted to depart from it, on occasion, and speak of something which cannot be connected, even remotely, with the lesson or words of the gospel. The objection to the rule is that the people get to know very intimately certain portions of the gospel, and certain lessons to be drawn from them, but remain uninformed about other points of doctrine, since they do not come at those times when Christian doctrine in general is explained to them. The objection is a valid one, but seeing that there is a law—elastic though it is—which specifies the subject-matter of the discourse at the chief Mass in parish churches, we think it should not be habitually disregarded unless such a practice is countenanced by the Ordinary.[7]

[1] Cf. Fortescue, *The Mass,* p. 284.
[1] Vermeersch-Creusen, *Epitome,* II, §679.
[1] Clacys-Bouuaert, *Jus Canonicum,* II, §140.
[4] Zl.zl.J., XII, 1920, p. 299.
[*] *Op. tit.,* p. 285, note 1.
[4] *De lure Parochorum,* §220.
[7] Cf. Jansen, *Canonical Provisionsfor Catechetical Instruction,* p. too.

66.—Vernacular Scripture at Sunday Mass

Is there a strict obligation to read in English, on Sundays and Holy Days, the epistle and gospel of the Mass? May other scriptural extracts be substituted in order to widen the people's knowledge?

Canon 1344, §1: Diebus dominicis ceterisque per annum festis de praecepto proprium cuiusque parochi officium est, consueta homilia, praesertim intra Missam in qua maior solet esse populi frequentia, verbum Dei populo nuntiare.

Canon 1345: Optandum ut in Missis quae, fidelibus adstantibus, diebus festis de praecepto in omnibus ecclesiis vel oratoriis publicis celebrantur, brevis Evangelii aut alicuius partis doctrinae Christianae explanatio fiat. . . .

(i) We cannot discover any certain written precept in the common law ordering the epistle and gospel to be read at the public Masses on Sundays and Holy Days. Canon 1345 recommends an explanation of the gospel at all public Masses, and canon 1344, §1, declares it to be the duty of the parish priest to give a homily at the chief Mass.

(ii) Local written law very frequently imposes a strict obligation of reading the epistle and gospel at all Sunday Masses. Thus *Lancaster Statuta,* 1935, n. 184; *Middlesbrough Decrees,* 1933, n. 230; *Liverpool Synod,* 1934, n. 220. Other texts, as *Westminster Synod,* 1915, p, 13, assume that this is the practice everywhere, and direct that the portions may be read by another priest whilst the celebrant is reciting them in Latin at the altar.

(iii) In those dioceses which have no local written law on the matter it will usually be found that the practice has been customary from time immemorial, and it must, therefore, in our view, be regarded as a legitimate custom *praeter legem.* The law on custom is difficult to interpret, and for that reason is made precise in many places by a written law. It is our opinion that the parish priest may not, on his own authority, discontinue the custom of reading the epistle and gospel in English at the Sunday Masses.

But he may, of course, in addition to these extracts, read other portions of the Scriptures if he so desires. This is, in fact, recommended for catechetical instruction by *I Westm.,* Dec. VIII, n. 3: "copiosis et aptis sacrae Scripturae locis".

67.—Prayers with the Notices

It is the practice of some priests, before they read the parish notices after the &0iPe^ °ffbe Sunday Masses, to recite with the congregation prayers, a decade of the Rosary, for instance, for the sick, and the "De profundis" for the dead. This seems to be contrary to the ruling that no prayers must be said in the Mass except those prescribed by the rubrics. Is this practice quite in order? Or can custom make it tolerable? Or can it be tolerated at all?

It is dearly forbidden to add prayers to those prescribed by the rubrics during the Mass itself, and the Holy See has more than once forbidden such additions, even when imposed by the Ordinary, as in J.R.G, n. 182, which forbids prayers for rain to be inserted after the *Pater Noster,* and in n. 1588.9

which declares the practice to be a scandalous abuse, "iis maxime qui amant observantiam bonorum rituum".

But the time between the gospel and Creed, used at public Masses for preaching and for a variety of other things such as notices, banns of marriage, and commemorations of the departed, cannot be regarded in quite the same light. It is an interlude, the use of which is not strictly determined by the rubrics. Nevertheless, everything even during this interlude should be done, as St. Paul says, "decently and according to order", since it is connected with the sacrifice of the Mass.

Failing any written directions as to what may or may not be done, we must rely, firstly, as our correspondent suggests, on what is customary. We cannot find any author who discusses the point, but it appears to us that the custom of reciting some vernacular prayers is not *contra legem.* Custom permits at this time announcements of dances, whist-drives, and other social events; financial appeals *et hoc genus omne* arc mingled with the notices. Some may think that all this is decent and in order, because necessary for the support of religion, and others may think it undesirable. Without taking sides in this dispute, we merely observe that these practices exist, and, that being so, it would be extremely odd to maintain that a vernacular prayer at this time is out of order. Moreover, a short prayer commending the souls of the faithful departed to God is, we believe, a universal custom when the names of the dead are announced; some preachers often conclude with a prayer, and there is no reason why a prayer should not form part of the sermon

We are therefore of the opinion that where the custom of reciting certain prayers at this time exists it may be tolerated. But, if there is any doubt on the point, it is open to the Ordinary to give a decision on the general principle of canon 1259, §1. Thus *Liverpool Synod,* 1954, n. 196, states: "Nullo modo licet novas devotiones in ecclesias inconsultis Nobis inducere"; *Middlesbrough Decrees,* 1935, n. 194: "On Sundays and holidays of obligation, let short acts of faith, hope, charity and contrition be recited in English before rhe principal Mass."

68.—Collection by Mass Celebrant

Does there exist any certain law forbidding celebrant to leave the altar during Mass in order to take the collection for some special object, for example, on the occasion of the yearly collection for the education of candidates for the priesthood?

The solution to this question is to be sought in an application of the rules *de interruptione Missae.* Any interruption of the action of the Mass requires a proportionately grave reason, e.g. giving out notices or banns of marriage. After the consecration the gravest of reasons is required, for example, to administer the last sacraments to a dying person, or a sudden illness on the part of the priest.1

If a collection is made by the celebrant, it would presumably take place after the gospel or sermon. We can find no text of the common law expressly declaring that it is unlawful for the celebrant to do this. The

1 Cappello, *De Sacramentis,* <582$.6

practice is obviously undesirable for all sorts of reasons, and some writers unequivocally condemn it, e.g. Cardinal Gasparri: "Nos putamus esse reprobandam consuetudinem, qua celebrans, deposita post evangelium casula, eleemosynam a fidelibus per ecclesiam sollicitat, nec episcopum posse id praecipere."[1] On the other hand, lawful custom in many places justifies the practice. Thus, *l'Ami du Clergé* 1909, p. 640, and 1921, p. 416, assuming the correctness of the practice, gives directions about the removal of vestments.

It is clearly within the province of local law to make explicit what the common law leaves an open question. The practice is condemned in the severest terms by *III Provincial Council of Baltimore*, Tit. Lx, n. 293 : "Damnavit perversam agendi rationem illorum sacerdotum, qui ipsa intra missarum solemnia ab altari recedunt, aedemque sacram circumeunt, a singulis fidelibus eleemosynam petentes. Tanta vero apparet quorumdam pertinacia ac in observandis etiam strictissimis legibus socordia, ut qui constituti sumus legum ecclesiasticarum custodes, alta voce decretum antecessorum nostorum inculcare constringamur."[2] We have examined the collections of English diocesan laws at our disposal and can find no express prohibition.

Our own view is that of Cardinal Gasparri, particularly as regards collections which are personal to the priest, as the Easter offerings. But there are, no doubt, many priests who see no objection to this practice, and it is ultimately a matter for the conscience of each individual to decide, except in places where such collections are forbidden by local law, taking into account local customs, necessity and the avoidance of scandal.

Génicot sets out what is, we believe, the usual attitude of priests: "Consuetudinem ecclesiae circumeundae post evangelium ad eleemosynas corrogandas cum Gasparri (n. 847) aliisque reprobandam ducimus. Interrumpitur enim Missa ob causam quam Ecclesiae consuetudo non recipit, immo vix recipere posset, cum turpis lucri speciem habeat celebrantem ab altari discedere ut pecuniam corroget. Attamen si vera necessitas ad id cogeret, quia vere constaret aliud medium non suppetere quo pecunia alendo sacerdoti vel cultui exercendo necessaria congregaretur, ad tempus id licitum censeremus."[3]

69.—Celebrant with Defective Sight

A priest who, because of defective sight, says always, by a dispensation granted to him, the votive Mass of Our Lady, is sometimes appointed to say at the high altar the public Mass on Sundays as well as on other days. Some have questioned, with good reason, the legality of such a priest being appointed to say a public Mass, since there are at least two or three priests, in the large community to which he belongs, who could say, without any great inconvenience, the Mass proper to the day. Is there a ruling on the point?

The rules which determine the rubrics to be observed in these cases are formulated in an Instruction, S.R.C., 12 January, 1921, n. 4363, but none of them deals with the above question; nor is the point mentioned in the

1 Dr *Eucharistia,* §847.
2 Cf. *Ecclesiastical Pinins,* XXXVII, 1907, p. 523.
3 *Casus,* n. 769.

faculty enjoyed by Apostolic Delegates and others as printed in *Periodica* 1923, p. 139.

But it seems to us, on general principles, quite certain that the public Mass on Sundays should conform with the calendar, and that the afflicted priest should not say a votive Mass when other priests are easily available. This opinion is supported by the explicit directions occurring in the text of rescripts granted by the *Congregation of Rites e.g.* "dummodo, si fuerint parochi, per alium sacerdotem missam officio occurrenti respondentem celebrare faciant, quoties pro populo applicare tenentur" [1] "dummodo . . . celebret in oratorio privato, aut, si in ecclesia publica, hora a populo minus frequentata".[2]

It is mentioned more than once in the official documents that the conditions attached to such induits bind in conscience.

Should a priest who by induit recites daily a votive Mass of Our Lady, use always white vestments in a public church or those corresponding to the Office of the day?

The Instruction of the *Congregation of Rites* "pro sacerdote caecutiente", 12 January, 1921, n. 4363, modifies previous instructions, in some respects, in order to make the votive Mass tally, as far as possible, with the Mass of the day. Thus, whenever *Gloria* and *Credo* are to be said in the Mass of the day according to the calendar of the church, they are to be said in this votive Mass of Our Lady. One is free to argue that the same principle must apply, with much more reason, to the colour of the vestments, particularly as it is agreed that the use of the liturgical colour corresponding with the Mass said does not bind *sub gravi.* It is a point which could properly be put to the Sacred Congregation. Our own view is that the rule given by *S.R.C.* 2560.1, and 3146.2, which requires always white vestments for these Masses, is still in force, and this is maintained by those who have commented on the subject since 1921, e.g. Aertnys, *Compendium Liturgiae Sacrae* §152. A good solution satisfying everyone is to use cloth of gold vestments, if they are obtainable, for white, red and green, as permitted from J.R.C., 3646.2.

May a blind priest who has obtained the usual induit for a votive Mass of Our Lady recite this Mass three times on Christmas Day?

S.R.C. 26 January, 1920, n. 2356.1 : (i) An Sacerdos, qui ob debilitatem visus aliamvc justam causam ex Induito Sedis Apostolicac celebrat aliquam ex Missis votivis aut Missam quotidianam Defunctorum, possit in die Commemorationis Omnium Fidelium Defunctorum ter Sacrum facere, eamdem Defunctorum Missam quotidianam repetendo?

(ii) An idem Sacerdos, qui pariter ex Apostolicac Sedis Induito Missam Deiparae votivam aut aliam votivam celebrat, valeat in posterum die Nativitatis Domini eamdem prorsus Missam ter dicere?

[1] Dc Herdt, *Sacrae Uturgiae Praxis.* I, §68, iv.
[1] Aertnys, *Compendium Liturgiae Sacrae.* §151.

Et Sacra eadem Congregatio, audito specialis Commissionis suffragio, omnibus perpensis, rescribendum censuit: *Affirmative ad utramque quaestionem.*

The question has the words "in posterum", since, from previous decrees, nn. 2802.3 and 3146, the practice now indulgently permitted was forbidden.

70.—First Friday Votive Mass

Under what conditions may one have a votive Mass of the Sacred Heart on the first Friday of the month?

S.R.C., 28 June, 1889, n. 5712: In iis vero Ecclesiis et Oratoriis, ubi Feria VI, quae prima unoquoque in mense occurrit, peculiaria exercitia pietatis in honorem divini Cordis, approbante loci Ordinario, mane peragentur: Beatissimus Pater induisit, ut hisce exercitiis addi valeat Missa votiva de Sacro Corde lesu; dummodo in illam diem non incidat aliquod festum Domini, aut duplex primae classis, vel Feria, Vigilia, Octava ex privilegiatis; de cetero servatis rubricis.

This votive Mass, like other popular devotions introduced during the pontificate of Leo XIII, is *suigeneris*, though resembling in many respects the solemn votive Mass "pro re gravi et simul publica causa" which is regulated in *Addit, et Variat.*, II, 3.

(i) Since the decree makes no distinction, the Mass—which may be even a low Mass—may be celebrated in any church or oratory, public, semi-public or private, but only one votive Mass is allowed, unless the rubrics happen on that day to permit votive Masses in general, in which case the additional votive Masses must follow the ordinary rules of such. The Mass is *Cogitationes* as found in all Missals since 1929 on the Friday following the Octave of Corpus Christi; the *Gloria* and *Credo* are said, and of course the proper preface.

(ii) The idea underlying this privilege is that the votive Mass is part of the devotions which are taking place in the morning in honour of the Sacred Heart. In this respect it somewhat resembles the Leonine October devotions, concerning which the decrees sometimes refer to Mass being celebrated during the recitation of the Rosary. It is, therefore, a *sina qua non* that special devotions to the Sacred Heart shall take place either immediately before or immediately after the Mass. The exact nature and extent of these devotions are not defined, but the point offers no particular difficulty, since the Ordinary's previous approbation is required: usually the Litany and some Acts of Reparation would be considered the minimum; the approbation is given in some dioceses for all churches and chapels, in others at the request of individuals.

(iii) It will be found, generally speaking, that it is the exception for this votive Mass to be forbidden by the rubrics: like all matters of this kind, it is governed by a mass of detailed rules. Many diocesan calendars indicate when any modifications occur owing to the exceptions formulated in the above decree, or one could obtain the universal calendar and adapt it to the local one. Failing this, it will be necessary to consult some modern expert on the subject, such as O'Connell, *Celebration of Mass,* I, pp. 101-103, or Croegaert, *De Rubricis Missalis,* pp. 148-152.

§5. MISSA PRO POPULO

71.—Missa Pro Populo: Justice

Is it permissible, under any circumstances, for one bound to the "Missa pro Populo" to take an honorarium from the parochial funds?

Canon 359, §1 (cf. can. 466, §1): Debent quoque . . . omni exiguitatis reditiuum excusatione aut alia quavis exceptione remota, omnibus dominicis aliisque festis diebus de praecepto, etiam suppressis, Missam pro populo sibi commisso applicare.

Benedict XIV, *Cum semper oblatas*, 19 August, 1744; *Fontes,* n. 545, §2: Et quamvis minime defuerint, qui per inanes, et frivolas interpretationes huiusmodi obligationem a Sancta Synodo (Tridentina) memoratam de medio tollere, vel saltem extenuare contenderint; quum tamen relata Concilii verba satis clara et perspicua sint, quumque praedicta Congregatio eiusdem Concilii interpretationi privative praeposita, constanter edixerit, eos quibus animarum cura demandata est, non modo Sacrificium Missae celebrare, sed illius etiam fructum medium pro Populo sibi commisso applicare debere, nec illud pro aliis applicare, aut pro huisusmodi applicatione eleemosynam percipere posse. . . .

(i) This grave obligation, which die Council of Trent, Sess. XXΠI, cap. i, *De Ref.,* traces to a divine precept, is clearly determined by the Church, and is also held to arise from a quasi-contract between parish priest and people; the application of these Masses is due to the people in justice, on the supposition that the parish priest is receiving from his benefice that measure of support to which he is legally entitled. Since it is an obligation of justice, he clearly may not take a stipend for the *Missa pro Populo* from the parish funds or from any other source whatever; similarly, because it is an obligation of justice, the law of canon 824, §2, forbids him to accept a stipend for a second Mass except only on Christmas Day. Papal induits may be obtained which modify the law in certain directions, but the principle remains intact: accepting a stipend for the *Missa pro Poptdo* is forbidden for the same reasons as accepting two stipends for one Mass; canon 825.2: "Nunquam licet eleemosynam recipere pro Missa quae alio titulo debetur et applicatur".

(ii) The law is not, perhaps, so clearly perceived in this country, because the constitution of a parochial benefice is, to some extent, in dispute. Let us suppose, without in any way attempting to define what constitutes a benefice in England, that a parish priest has settled the question according to his conscience, and is receiving everything to which he is entitled as the fruits of his benefice. It is then completely certain that he is forbidden to take anything further from the parochial funds *ratione Missae pro Populo.*

(iii) But what happens sometimes, in our experience, is this: the parish priest is receiving less than his due—he is, for example, either taking no salary at all or considerably less than local law or custom sanctions. Instead, he takes from the parochial funds a sum for the *Missae pro Populo* equivalent to what he would have received if he had accepted manual stipends on those days. There is clearly no substantial illegality in this procedure, no violation

of the law, no injustice of any kind. At the most it is a slight irregularity of a purely academic character. Instead of debiting in his parish account books a sum *ratione Missae pro Populo,* he should debit this same sum as salary' taken by him. Everything is then correct, and inasmuch as the account books are open to inspection at the periodical visitation, this latter method should always be followed, in order to avoid any misunderstanding on the part of the visiting prelate.

(iv) In some dioceses the number of Masses to be said has been reduced by papal induit. It is the custom, nevertheless, with the Ordinary's sanction, for those parish priests who desire to say the full number (as prescribed by the common law) to supplement their salary from the parish funds. In such cases the principle explained in (i) and (ii) is not assailed. For, if a parish priest enjoys an induit permitting him to satisfy his obligation in this respect by saying, let us suppose, twenty Masses annually for the people instead of the full number required by the common law, it follows that he is not bound on a title of justice to say Mass for them on those days on which the obligation has been extinguished. He is, therefore, free to accept a stipend on those days. As the administrator of the parochial funds, and with the Ordinary's sanction, he takes the appropriate stipend from the funds which he controls.

Or, if desired, the matter may be regarded from another point of view: the constitution of an English benefice being, at the moment, radier vaguely determined, it is for the Ordinary to fix it in terms of a salary due to the parish priest from the parochial funds which he administers. The additional sum taken in the above circumstances is then to be regarded as legitimate beneficial fruits, namely, a certain number of Mass stipends due to the beneficiary' and to be applied for the people, though not technically *Missae pro Populo.*

72.—Missa Pro Populo: Indult

Why is it that the number of days on which parish priests are bound to a "Missa pro Populo" varies in different parts of England?

The common law of the Church, as contained in canons 466 and 539, obliges parish priests to offer Mass for the people on all Sundays of the year, on the Holy Days of obligation enumerated in canon 1247, and on the suppressed Holy Days of obligation, which were accurately determined by the *Congregation of the Council,* 28 December, 1919.[1] Release from this obligation, either wholly or in part, may be obtained by individual priests on the score of poverty; a personal indult from the Holy See is needed. More commonly, the Ordinary obtains the faculty to reduce the number for all parish priests within his jurisdiction, or for those who are in special need of this favour. Thus, in 1919 priests of Westminster were informed that they could obtain a reduction by presenting a detailed financial statement *onerata conscientia* to the Ordinary; the faculty was not widely used and, we believe, has now ceased altogether. In Middlesbrough all were dispensed from the obligation on Sundays and feasts, except on the eleven feasts mentioned in canon 306? In 1924 the rule in Nottingham was that each priest in charge

[1] Cf. *The Clergy Rerim·,* V, 1953, p. 238.
[*] *Synodal Decreet,* 1933, n. 44.

of a parish was to say one Mass each week, on any suitable day, to be announced on the previous Sunday.1 1 ienee the number is bound to differ in each diocese according to the faculties obtained by each Ordinary, or the measure in which he sees fit to use them.

73.—Missa Pro Populo: Care of Souls

Does the obligatio» of saying the "Missa pro Populo" bind a chaplain to a private family, whose priestly ministration extends not only to the staff of the house, and Catholic residents on the estate, but includes the service of a district with its own church, and with its own boundaries distinct from those of the local parishes ? The chaplain is quite independent of the jurisdiction of any neighbouring priest.

On the question of law the answer is simple. The obligation binds every priest who, by reason of his office, actually exercises the chief spiritual care of souls within a territory erected as a parish. This includes not only parish priests (parochi), whether removable or irremovable, but also priests in charge of a parish pending the appointment of a parochus (vicarii oeconomi, can. 475, §i), those in charge of a parish belonging to a moral person, such as a religious order (vicarii paroeciales, can. 471, §1), and those who are taking charge of a parish, together with the obligation of the *Missa pro Populo,* by arrangement, during the absence of the parochus (vicarii substituti, cann. 466, §5, and 474). Priests with care of souls within a parochial unit, and who do not belong to one of the categories mentioned, are not bound by this obligation, e.g., the assistant priests attached to a parish (vicarii cooperatores) ; chaplains of convents, hospitals and prisons; superiors of colleges.

On a question of fact, it is certain that our correspondent is under no obligation as a chaplain of a private family. Whether he is bound by reason of his care of souls in the district, with its own church and boundaries, is a question of fact which can easily be ascertained by communicating with the diocesan curia. If the district has been erected into a parish there will exist some documentary evidence.

It may happen that, for various reasons, the district has not been canonically erected into a parish, although, for practical purposes of priestly administration, some territory has been assigned to the priest, in much the same way as a chapel of ease and its surrounding district may be administered by a curate of the parent church. If the district served is not a parish, it belongs canonically to some neighbouring parish, no matter how independent the chaplain conceives himself to be from the control of the neighbouring parish priests. Cf. *S.C. Consist.,* 1 August, 1919, *A.A.S.t'XI,* p. 346; Fanfani, *De lure Parochorum,* §361 seq.

74.—Missa Pro Populo: Army Chaplains

Are military chaplains under the obligation of saying the "Missa pro Populo" in view of the fact that they are granted the faculties of parish priests in favour of members of the Forces ?

‘ *Dtcrrta tt Precepta,* p. 17.

Canon 451, §2: Parochis aequiparantur cum omnibus iuribus et obligationibus paroecialibus et parochorum nomine in iure veniunt:

1. Quasi-parochi, qui quasi-paroecias regunt, de quibus in canon «6, §3;

2. Vicarii paroeciales, si plena potestate paroeciali sint praediti.

§3. Circa militum cappellanos sive maiores sive minores, standum peculiaribus Sanctae Sedis praescriptis.

Some reason for supposing that army chaplains arc bound to say the *Missa pro Populo* may be deduced from their status, which is equivalent to that of "personal" as distinct from "territorial" parish priests, and the *pagella* of their faculties states that they are given "facultates omnes paroeciales". Thus Dr. Brys, in attempting a definition which will include all who are bound by the obligation, writes in *Collationes Brngenses,* 1928, p. 461: "Attamen non qualiscunque cura animarum sufficit ad iUam obligationem inducendam, sed illi tantum obligantur qui principaliter et immediate certum populum vi officii sui in spiritualibus regunt, seu omnes qui actu verum officium paroeciale exercent." Before the Code the point was in some dispute, though most canonists, e.g. Many, *De Missa* (1903), §90, held that army chaplains were not bound by this obligation. A resolution *S.C. Cone.,* 22 May, 1909, decided that the Spanish military chaplains were not bound, a legal text which is the *locas classicus* on the subject.

Our present law is contained in canon 451, §3, on which Cappello, *De Sacramentis,* §642, writes: "Num vero parochis aequiparentur, an non, peculiaria Sanctae Sedis praescripta sunt inspicienda, uti expresse habet cit. can. Quare pro singulis statibus seu nationibus, circa militum cappellanos sive maiores sive minores, standum est peculiaribus Sedis Apostolicac praescriptis. In Italia iurisdictione vere paroeciali fruuntur, at nihilominus Sacrum applicare non tenentur."

We may say the same of our army chaplains as Cappello says of those in Italy: they have parochial jurisdiction but are not bound to say the *Missa pro Populo* because there is no reason to suppose, either from their faculties or from any other known document, that the Holy See recognizes the existence of such obligation. There is no doubt that the army chaplains frequently apply Masses for the souls entrusted to their care, but a strict obligation to do so on Sundays and other days named in the law is a burden which requires to be proved; it may not be presumed to exist solely because they enjoy a parish priest's jurisdiction.

75.—Missa pro Populo: Supply Priest

A parish priest is legitimately absent for the period of the war as an army chaplain, bis place being taken, with the Ordinary's express approval, by a substitute. Is this latter priest bound to say the "Missa pro Populo" ?

Canon 466, §1: Applicandae Missae pro populo obligatione tenetur parochus ad normam can. 339, quasi-parochus ad normam can. 306.

Canon 466, §5: Legitime absens parochus potest Missam pro populo applicare vel ipse per se in loco in quu degit, vel per sacerdotem qui eius vices gerat in paroecia.

Canon 474: Vicarius substitutus qui constituitur ad normam can. 465, §§4, 5, et can. 192.3, §2, locum parochi tenet in omnibus quae ad curam animarum spectant, nisi Ordinarius loci vel parochus aliquid exceperint.

(i) This obligation is one of the details which the law assumes will be settled either by the Ordinary or by the parish priest who is legitimately absent. For it is ultimately a question of the just remuneration due to the *vicarius substitutus* for his services, since he will be the poorer by the equivalent number of Mass offerings if he is bound to the *Missa pro Populo.* It may well be, considering the nature of our parochial benefices in this country, that the *vicarius substituitis* will have assigned for his support whatever the parish priest was himself accustomed to receive; in this case it would not be unreasonable for the absent parish priest to require his substitute to undertake, without any special remuneration, the obligation of saying these Masses. It is entirely a matter of arrangement between the two priests concerned, and the Ordinary would be well within his right in assuring himself that the obligation is being discharged by one or other of these priests.

(ii) Supposing, however, that the matter has not been expressly determined, it is the view of some canonists, based on the terms of canon 474, that the presumption is for the obligation to rest on the *vicarius substitutus-,* thus Claeys-Bouuaert in *Jus Pontificium,* 1927, p. 80. We do not agree with this view. The presumption more correctly is that the absent parish priest is bound by the obligation as long as he retains the right to return to his parish, and this appears to be the commoner view amongst the writers. Wernz-Vidal, *Ius Canonicum,* II, §742: ". . . parochus absens poterit sibi reservare applicationem Missae pro populo, quae reservatio, attento canone 466, §5, supponenda est, nisi substituto expresse Missae applicationem commiserit". Fcrreres, *Tbeol. Moralis,* II, §466: "Non autem per se ad id tenentur vicarii substituti in absentia parochi aut pendente recursu contra sententiam privationis paroeciae, nisi ex conventione cum parocho aut ex dispositionc Ordinarii aliud fuerit statutum." Cf. also Fanfani, *De lure Ç'arochorum,* §382; *Collationes Brugenses,* 1923, p. 409; 1928, p. 461.

76.—Missa Pro Populo: Delegation

Are exceptionally grave reasons required before a parish priest may bave the "Missa pro Populo" said by an assistant priest instead of by himself personally? Assuming that he unlawfully transfers the obligation in this way, is he bound to say the Mass again personally?

Canon 339, §4: Episcopus Missam pro populo diebus supra indicatis per se ipse applicare debet; si ab cius celebratione legitime impediatur, statis diebus applicet per alium; si neque id praestare possit, quamprimum per se vel per alium applicet alia die.

Canon 466, §1: Applicandae Missae pro populo obligatione tenetur parochus ad normam can. 559.

§4. Parochus Missam pro populo applicandam celebret in ecclesia paroeciali, nisi rerum adiunc:a Missam alibi celebrandam exigent aut suadeant.

§5. Legitime absens parochus potest Missam pro populo applicare vel ipse per se in loco in quo degit, vel per sacerdotem qui eius vices gerat in paroecia.

(i) The obligation is *personal* and *local* as well as *real·,* real because its neglect involves a violation of justice; local since the people who have a right to this Mass also have the right to be present when it is offered; personal for reasons closely connected with the position of the parish priest, as one having the care of souls and the office of mediating between them and God. The real obligation is, indeed, fulfilled substantially if the Mass is said by any priest, since its fruit is ex *opere operato·,* but its personal fulfilment, and to a lesser degree its celebration before the people in the parish church, have a fruit *ex opere operantis* which may not lawfully be disregarded except for proportionately grave reasons. The *Congregation of the Council* has refused to admit the reasonableness of custom contrary to the personal fulfilment of the obligation.

(ii) Legitimate absence, for example during holidays, is mentioned in canon 466 as justifying the transference of the personal obligation. Local laws, as in ***IV** Malines,* n. 150, frequently determine more closely the meaning of "legitime impediatur" in canon 339, §4, in so far as it affects the parochial clergy; such reasons are the occurrence of an exequial Mass or some other similar obligation which cannot be transferred to a free day. The writers suggest other lawful reasons as, for example, the poverty of the priest who would otherwise be deprived of a Mass offering.[1] If the Ordinary's sanction is obtained for the transference of the obligation, the act is obviously lawful, and this consent may often be presumed for individual cases when there exists a reasonable cause. Bearing in mind, however, that the personal obligation is a certain one, the Ordinary's sanction must always be obtained if the parish priest proposes habitually, and not merely on occasion, to have this Mass said by an assistant priest.

(iii) Assuming that the obligation has unlawfully been transferred, it is conceivable that a priest may be guilty of a grave violation of the law: various opinions are possible, as Cappello notes in *De Sacramentis,* §656, and the matter must be left to the individual conscience. One thing is quite certain, namely that if the Mass has been said by some priest, and the *real* obligation thereby discharged, the parish priest who has wrongly excused himself from saying it personally is not bound to offer this Mass again. Cf. Cappello, *loc. cit.* ad 3.

§6. MASS OFFERINGS

77.—Nature of the Mass Offering

The ordinary lien', which appears to be accepted by most of the modern manuals, regards the obligation of saying Mass for the intention of the donor of a stipend as arising from a contract of commutative justice. This explanation is open to many objections and 1 would like to know whether another, and I believe older theory, can be held, namely, that the stipend is an offering on the part of the donor, which on acceptance gives rise to certain obligations on the part of the priest, which obligations arise not strictly from commutative justice but from the law of the Church.

[1] Cf. Fanfani, *De litre Parochorum,* §587, viii; *Ecdesiastial Review,* November 1041, p. joj ; *Collation*! Brugemei,* 1928, p. 467.

Keller, in his study of the mass stipend, after remarking that almost every author who has written on the subject has thought out his own hypothesis, states that "the most common, as well as the most satisfactory explanation of the nature of Mass stipends is the theory of the *innominate contract*, which was proposed by Suarez and defended by Cardinal Gasparri." This is, as our correspondent states, the common view, and it is practically taken for granted by many writers. It belongs to the class of *innominate contracti* known as "do ut facias", and gives rise to an obligation of commutative justice.[1] But the commonly accepted view on a disputed topic is not always the correct one. There have always been authorities who, for serious reasons, have not accepted this solution, and have regarded the Mass offering as a gift rather than a matter of contractual obligation.

(i) In the first place, the notion of a strict contract in the matter appears to be foreign to the mind of the Church. Interpreting the instructions of the Council of Trent, Sess. XXII, *De Observandis*, the Code does not here speak of a contract but simply "licet stipendium recipere"[2] and "A stipe Missarum quaelibet etiam species negotiationis vel mercaturae omnino arceatur"[3] But all sorts of other ecclesiastical obligations and sendees, for example, capitular distributions, are dealt with on a strict contractual basis. An adequate support is due to the priest, and if it is not forthcoming he has a grievance; in places where ecclesiastical revenues which provide his living are chiefly collections from the people, he can explain to them that they are not giving sufficient. On the other hand, the administration of these funds is supervised by the Church, and the priest is under a grave obligation to apply any superfluity to charitable purposes.[4] But the Mass offering is not included in ecclesiastical revenues, and it remains in the free disposal of the priest. He has no legitimate grievance if these offerings are not forthcoming, and he would be altogether in the wrong if his complaint took the form of telling parishioners that they were wanting in their duty towards him, in not giving sufficient Mass offerings.

Moreover, far from regarding the Mass offering as a sum to which the priest is entitled in return for saying Mass for a given intention, the Church requires parish priests and others to say Mass for the people on Sundays and certain feasts without a stipend, and the acceptance of such is gravely forbidden even for the second Mass which might be celebrated on those days[5]. In addition, the bishop has the power of adding to these obligations of the common law by requiring Mass to be said occasionally without a stipend.

An obvious objection to this view turns on the very serious obligations which arise, once a stipend is accepted; for the easiest way of explaining them is by supposing that their non-observance is a violation of commutative justice. But another explanation is forthcoming: the obligations arise from obedience to the positive laws of the Church. . . the obligation on the part of the priest towards the person who makes the offering is not generated by the acceptance of the stipend, nor direcdy by any agreement between the

1 Keller, *Mass Stipends,* page 27; Prümmcr, *'Tbtol. Moralis,* III, §265 ; *Collationis brugtnsts* 1922, p. 378.
' Canon 824.
* Canon 827.
4 Canon 1475·
• Canon 824, §2.

parties, but solely by the will of the Church."[1] The reasonableness of this view is supported by the fact that smallness of matter does not make the obligation light, as it does in every other contract of commutative justice; it is always *sub gravi* to say the Mass or return the stipend. From this rule, and from innumerable other legislative details, it does seem that the ordinary contractual obligation is so superseded by positive law that we may rightly conclude that the obligations themselves depend on these positive enactments.

(ii) Secondly, the intention of the donor may have some bearing in deciding the nature of the Mass offering, although, seeing that the professional canonists are not agreed, we might expect to find a bewildering choice of ideas in the minds of the faithful. No doubt, in many cases, the offering is made with the intention of setting up a contracted debt of justice; in some cases, a very ignorant person's intention might be, in perfect good faith, frankly simoniacal. But if we look at the subject in the generality of cases, it is usually true to say that the faithful make these offerings distinctly as gifts, as something over and above the support they are bound to give in justice to the clergy. Many people, though contributing most generously to the support of their pastors, never make a Mass offering at all. Even in cases where the person's mind is primarily fixed on the application of Mass for his intention, it does not follow that the offering is regarded as a necessary condition for obtaining this benefit. Everyone experiences a certain reluctance in seeking a purely gratuitous favour, and it is a natural thing, when asking for it, to make a gift to the priest, an alms, "eleemosyna". Another example might make the point clearer. If a priest is wanted to say Mass in a country house at some distance, the financial arrangements might properly take the form of negotiation between the householder and the priest or the diocesan authorities; but even "species negotiationis" is forbidden with regard to the Mass offering. In the one case it is a matter of commutative justice, in the other it appears not to be. The priest in question, over and above what is strictly his due, on a title of justice, may take an alms, an offering, for the application of the Mass.

(iii) Lastly, an argument in favour of the view we are explaining may be drawn from the nature of the Mass offering itself: ". . . sacerdos non accipit pecuniam quasi pretium consecrationis . . . sed quasi stipendium suae sustentationis".[2] Various suggestions have been made, both by ancient and modern authors, in order to avoid even the suspicion of simony in the acceptance of Mass offerings. De Lugo sees an analogy with the painter who paints a picture gratuitously, yet accepts money for his daily sustenance and for the necessary materials.[3] Laymann suggests that the money is paid for the extrinsic labour incident on the celebration of Mass[4]; and various other subtle distinctions have been employed, any one of which we are free to accept. Generally the authors who admit that there is a contract of commutative justice do not hesitate to regard the offering and the application of the Mass as being the two terms of the contract.

Fr. M. de la Taille, S.J., proposes an explanation which is somewhat new, though based on ancient practice.[5] In the Old Law, in the case of

[1] *Ecclesiastical Rcvitu.* XXXIX, 1908, p. 239.
[1] *Summa Tbcol,.* II-II. ico. 2.
[•] *Viva.* IV, p. 275.
[4] Cf. *Grcgprianum,* IV, p. 570.
[1] *Mysterium Fidci.* p. 539; *Grtgorianum.* IV, pp. 355, 557.

those sacrifices which were not entirely destroyed by fire, the priest shared in what was offered to God, and in the New Law the same is true *mutatis mutandis.* The resemblance was more close in early days, when the offerings of the faithful were made in kind, but there are still traces of the rite in the Roman liturgy, for example, the bread and wine offered in the Mass of episcopal consecration. In modern times a gift of money takes the place of offerings in kind. It is not a contract "do ut facias" but a mandate accepted by the priest offering Mass "do ut des *(scilicet* Deo)." The priest is remunerated by God to whom the gift really belongs. On this explanation the part of the faithful is dignified: they are a priestly race offering gifts to God. The part of the priest is dignified: he is not the stipendiary of the faithful but of God, and he must either offer the gift as requested or return it to the donor. All the details of ecclesiastical legislation fit in easily with this rather fine and satisfactory theory, and it would appear to be the idea actually in the minds of the faithful, in a confused manner, when making an offering?

As opposed to all these explanations there is the very simple theory that the offering is a gift to the priest. Van Espen amongst the older canonists prefers this to any other solution "Hodiernum missarum honorarium speciem quamdam esse voluntariae oblationis . . . sicut laici illud tanquam Deo acceptam oblationem sacerdoti offerre debent, ita quoque illud sacerdotes non tanquam pretium missae, sed ut voluntariam oblationem grato animo accipere tenentur, unaque ostendere se velle Deo voluntarie sacrificare."[2] Scotus teaches a similar doctrine: "Nec intelligo strictam obligationem per conventionem legalem, sive per commutationem spiritualis ut orationis pro temporali ut eleemosyna quae data est: quia illa videtur simonia. Nec valet dicere, quod sacerdos commutaret pro aliquo temporali suum laborem corporalem: quia non est verisimile quod aliquis vellet sibi tantum dare pro labore corporali in illo actu. Sed eleemosyna liberaliter offertur, cum mendicatione orationis, et recipiens eleemosynam . . . liberaliter, scilicet, sine conventione et commutatione, obligat se ad orandum pro benefactore."[3]

Throughout this discussion the ordinary manual Mass has been kept in view. If it is a question of a benefice to which the application of a number of Masses is attached by the pious founder, there is scarcely room for regarding the obligation as anything else but a debt of strict justice.

78.—Time for Discharging Mass Obligations

What is the present law regarding the time within which Mass obligations must be discharged[1]

Canon 834, §1 : Missae pro quibus celebrandis tempus ab oblatore expresse praescriptum est, eo omnino tempore sunt celebrandae.

§2. Si oblator nullum tempus pro Missarum manualium celebratione expresse praescripserit: 1. Missae pro urgenti causa oblatae quamprimum

[1] A. somewhat similar view is held by del Giudice, E.T.L., III, p. 393.
[2] *Jus. Eccles. Universum,* P. II, t. iv, c. 6, p. 295, ed. Ï729.
[3] *Quodlibet* XX, cd. 1755, p. 278.

tempore utili sunt celebrandae. 2. In aliis casibus Missae sunt celebrandae intra modicum tempus pro maiore vel minore Missarum numero.

§3. Quod si oblator arbitrio sacerdotis tempus celebrationis expresse reliquerit, sacerdos potest tempore quo sibi magis placuerit, eas celebrare, firma praescripto can. 835.

Canon 855 : Nemini licet tot Missarum onera per se celebrandarum recipere quibus intra annum satisfacere nequeat. See also canon 841.

(i) The terms of the law in canon 834 are perfectly clear, and in fact deducible from the natural law, with the exception of the phrase in §2.2, "intra modicum tempus". The majority of the commentators interpret this phrase according to the rule of U7 *Debita,* 11 May, 1904, n. 2, a decree which was circulated in an English version to the clergy at the time: "Whatever may have been the teaching of theologians in the past as to the time within which Masses were to be said, whether for the living or for the dead, the Holy See now lays down a definite rule for all Masses. The rule is that the time available for the celebration of one Mass is a month, for the celebration of a hundred Masses six months, and for the celebration of a larger or a smaller number of Masses than a hundred, a proportionately longer or shorter space of time. No priest is at liberty to accept more than he can probably say within the space of a year." The Holy See[1] in the following year declined to impose a more specified determination of this time limit, answering: "Rem relinqui discreto iudicio et conscientiae sacerdotum iuxta decretum, *t regulas a probatis doctoribus traditas." Applying the rule of canon 6.4, the following hold that the time limits of *Ut Debita* are still of obligation: Cappello, *De Sacramentis,* §685; Marc-Gestermann, *Theol. Moralis,* II, §1611 ; Noldin, *Theol. Moralis,* III, §189; Génicot-Salsmans, *Theol. Moralis,* II, 5230. It is, in fact, such a usual interpretation of the law by the manualists 'hat most priests take it as being obviously correct and certain, and there is, of course, every reason for preserving a mode of reckoning which makes for the prompt discharge of Mass obligations.

(ii) It is, nevertheless, somewhat remarkable that the Code uses the vague phrase "intra modicum tempus", instead of the precise reckoning of Ur *Debita,* and it can, we think, be safely held with Keller[2] that the Code omitted the latter phrase intentionally in order to deprive the old decree of its binding character. It would have been quite simple to have preserved "infra mensem", as in other canons, if the legislator had so desired. Accordingly, not only Keller—a recognized authority on the subject—but some other writers of repute are of the opinion that the time reckonings of U/ *Debita* are now merely directive, not preceptive. Thus Priimmer, *Theol. Moralis,* III, §266: "Quae igitur hac de re statuta fuerant Decreto *Ut Debita* iam amplius non habent nisi valorem directivum." Cf. also in almost identical terms Aertnys-Damen, *Theol. Moralis,* 1939, II, §209; and less clearly Vcrmeersch-Creusen, *Epitome,* II, §106, and Wcrnz-Widal, *Ins Canonicum,* IV, §85: "Prudenter censeri potest tempus unius mensis pro una Missa, etc."

[1] *S.C. Cons.,* 27 February, 1905; *Fontes,* n. 4J22·
[1] *Mass Stipends,* p. ijx.

79.—November Masses

Is it permitted to say a novena of Masses for the intentions of those who, at the priest's invitation, send in names of the deceased together with whatever offering they care to make? If local legislation forbids this practice and requires the number of Masses to correspond exactly with the diocesan stipend, what are the obligations of a priest who, in ignorance of the legislation, has disregarded it?

Canon 830: Si quis pecuniae summam obtulerit pro Missarum applicatione, non indicans earundem numerum, hic supputetur secundum eleemosynam loci in quo oblator morabatur, nisi aliam fuisse eius intentionem legitime praesumi debeat.

Canon 832: Sacerdoti fas est oblatam ultro maiorem stipem pro Missae applicatione accipere et, nisi loci Ordinarius prohibuerit, etiam minorem.

(i) From these canons and from many other legal texts it is certain that a priest may lawfully accept as Mass offerings a sum which is not the usual diocesan stipend; there is a decision *S.C. Cone.,* 16 January, 1649, reversing an episcopal injunction which prohibited the acceptance of offerings in excess of the diocesan stipend.1 But it is always necessary to establish that the intention of the donor was to give a larger sum. If there is no local law to the contrary, the practice described by our correspondent is lawful, provided a novena of Masses is said no matter what the collective offering may be: if it is less than the diocesan stipend the Ordinary's sanction is required as in canon 852, or where the custom of November Masses exists it may be presumed as in canon 831, §2. It is evident, from the circumstances, that in November Masses the donors agree to offer a wholly indeterminate sum. Smith in *Ecclesiastical Eaw,* Vol. I, p. 532, quotes for America a decision—*S.C. Cone.,* 27 January, 1877—which expressly sanctions the custom of saying one Mass for an indeterminate collective offering, it being understood that the donors so desire: ". . . tantum apponatur tabella in ecclesia, qua fideles doceantur, quod illis ipsis eleemosynis una canitur Missa in die Commemorationis omnium fidelium defunctorum".

(ii) The practice is liable to abuse, for although it is open to any of the faithful to have whatever Masses they desire said according to the diocesan stipend, and to disregard the collective offering, many may be under the impression that the offerings over and above those destined for the novena will be applied to additional Masses according to the diocesan stipend. Therefore, in many dioceses, the indeterminate collective Mass offering, whether during November or at any other time, is forbidden, and the clergy are required to say the number of Masses which strictly corresponds to the diocesan stipend. A regulation of this kind is within the competence of the local Ordinary. *S.C. Cone.,* 16 January, 1649, refers not to these indeterminate collective offerings but to manual stipends in the ordinary sense of the term. The reply of 27 January, 1877, was for the diocese of Rochester, sanctioning the local custom.

If a priest is ignorant of the law which, as our correspondent states, has been promulgated in the diocesan synod, the common opinion would be that it is culpable ignorance. Whether it is or not, he is bound, in our

1 *Fontes,* n. 2691.

opinion, to say or get said for all former offerings received a number of Masses corresponding to the diocesan stipend; if this is a morally impossible burden, his only remedy is to seek condonation from the Holy Sec. This may appear a rather strict solution, but die legislation on Mass offerings is extremely strict and can be enforced by grave penalties as in canon 2324.

80.—Mass Obligations: Rifled Box

The contributions of the faithful placed, at the parish priest's invitation, in the Holy Souls' Box have been stolen. Is the parish priest bound in principle to get the Masses said? If so, how many? Coidd the obligation be discharged when saying the second Mass on days when duplication is permitted?

Canon 824, §2: Quoties autem pluxies in die celebrat, si unam Missam ex titulo iustitiae applicet, sacerdos . . . pro alia eleemosynam recipere nequit.

Canon 829: Licet sine culpa illius qui onere celebrandi gravatur, Missarum eleemosynae iam perceptae perierint, obligatio non cessat.

It was commonly taught before the Code, e.g. by Gasparri,[1] that the obligadon ceased if the Mass offering was stolen or lost through no fault of the priest, and this may still be held in regard to foundation Masses when the capital has disappeared through no fault of the trustee. It is now certain, from Canon 829, that in the case of manual Masses the obligation does not cease: *res perit domino·,* no matter what theory is held concerning the nature of the Mass offering, the priest who has accepted it is regarded as the owner and the loss is his. Nevertheless, we think that in the circumstances of the above case equity demands that a way should be discovered for releasing the parish priest from the full rigour of the law, and it may be done in two ways.

(i) It could be held, indeed, with plausibility that the priest has not actually received (perceptae) the offerings until he has emptied the box. "Vi cnim pcrceptonis stipendiorum", writes Cappello,[2] "et non antea, perficitur contractus inter celebrantem et oblatorem." Whilst lying in the box the offerings arc in process of reaching him, in rather the same way as they would be if sent by any other channel.

On the other hand, he has charge of the box and they are placed therein at his invitation. If, as is likely in some cases, he intends himself to say these Masses, it is difficult to avoid the conclusion that he is the owner of the contents of the box, and that he is consequently bound by the law of canon 829. He could, of course, seek condonation from the persons who made the offerings, or from the Holy See, but this is sacrccly worth while for what is a relatively small sum.

Having therefore decided that he is bound to say the Masses or get the obligation discharged by other priests, he could lawfully, in our opinion, use *tpikeia,* and either say the Masses when duplicating—which is normally forbidden by canon 824, §2; or get them said at a reduced stipend—which is normally forbidden by canon 840, §1.

The only manualist known to us who gives support to this view is

1 *Di Enchéristia,* §588.
1 *De Sacramentis** I, §679.

Wouters:1 "Potest tamen qui eleemosynam c.g. amisit, curare, ut alius pro minore stipendio Missam celebret." He does not, indeed, deal expressly with canon 824, §2, but the reasons of equity which lead him to disregard, in this case, the law of canon 840, §1, seem to apply equally to disregarding the law of canon 824, §2. For the reason behind all these regulations about stipends is to prohibit negotiations and practices by which a priest, in applying or disposing of Mass offerings, might grow richer: in the case we are discussing he is not enriched at all, and the solution we favour, though by no means certain, seems to be probable and reasonable, namely, that the obligation may be discharged when duplicating.

The number to be said can only be decided on a rough estimate from what the box usually contains, or from what is expected on a special occasion.

(ii) In many churches, however, it is customary for the parish priest to get these Masses said by other priests, and the offerings of the faithful are invited and accepted on this understanding; he does not undertake to burden himself with them either expressly or by implication. We think that, in these circumstances, quite a strong case can be made for the view that the parish priest is not the owner but merely the bailee (depositarius, mandatarius) of the contents of the box. In English law a bailee is not answerable if goods are stolen through no fault of his own, and the same must be said, in principle, of canon law. Cf. d'Annibale, *Theol. Moralis,* II, §524. An exception in favour of Mass stipends might be discerned, perhaps, in canon 859, but it can be interpreted as applying to the disposal of offerings which have actually passed into the possession of the person disbursing them. Accordingly, Vermeersch, commenting upon canon 829, writes: "Si autem de eo ageretur qui non foret nisi mandatarius (de quo in can. 857) qui mere stipendia transmittere deberet at nunquam stipendia acquisivisset, is ad nihil teneretur si stipendia ista casu fortuito apud ipsum petiissent. Haec enim patrimonium ipsius non essent ingressa; et obligatio mandati impossibilitate exsecutionis cessare dicenda est."2

81.—Second Mass Intention

A person asked a priest to apply Mass for his intention and gave him the usual stipend. Before Mass was said, another person asked the same priest to offer the second intention of the same Mass on his behalf and gave him a stipend for it. May the priest accept the second stipend and apply the second intention for the Mass for the second donor?

Canon 825: Nunquam licet. . . . 2. Eleemosynam recipere pro Missa quae alio titulo debetur et applicatur; 5. Duplicem eleemosynam pro eiusdem Missae applicatione accipere.

Canon 828: Tot celebrandae et applicandae sunt Missae, quot stipendia etiam exigua data et accepta fuerint.

Alexander VII, *Prop. Damnata,* Denz. no8: Duplicatum stipendium potest sacerdos pro eadem missa licite accipere, applicando petenti partem etiam specialissimam fructus ipsimet celebranti corrcspondentcm, idque post decretum Urbani VIII.

1 *Theol. Moralis,* II, §224.
2 *Theol. Moralis,* IΠ, §298.2.

(i) At certain periods in the past, when the law was not crystallized as it now is, a priest could accept more than one Mass offering: the whole notion of the Mass stipend as we now have it has developed from the practice, still referred to in some of the Secret prayers, of the faithful offering gifts at Mass.

We must exclude from our consideration the acceptance of two or more stipends in circumstances other than those which accompany the acceptance of an ordinary Mass offering of the amount fixed by diocesan law. Thus *Fontes,* n. 338, §10, and n. 4691, xvi, refer to "secundae oblationes" in cases where there is a co-celebration of the Holy Sacrifice by several priests; or the rules of a Religious Institute, whilst prohibiting the acceptance of Mass stipends, may permit offerings or alms other than those contemplated in canons 824 seq., or the "second" offering may be accepted, according to the terms of canon 825.4, not for the application of the ministerial fruit of the Mass, but for its celebration merely.

Obviously we exclude from this discussion a "second" intention in the sense that the celebrant, whilst accepting only one offering, intends the ministerial fruit to be applied for a second purpose if, for any reason, the first is not operative.

Lastly, we must exclude the case where two or more offerings are together not in excess of the diocesan stipend, and the donors are willing that one Mass should satisfy them all collectively; in given conditions the practice may be tolerated even when the collective offering is in excess of the diocesan stipend, as explained in Q. 79.

(ii) Leaving aside, for the moment, the question of accepting a second honorarium for a second intention, what meaning is to be given to this additional intention when a Mass is being applied under the rules of canons 824 seq. ? It can mean, firstly, a "memento", cither in the sense that the prayers are chosen, when the rubrics so permit, as an impétration for a special object; or in the sense that the priest intends to include others in the application of the ministerial fruit, in so far as it may be done without prejudice to the rights of the donor for whom the ministerial fruit is being in justice applied. Or it may refer, secondly, to that portion of the fruits of the Mass which arc personal to the priest (pro innumerabilibus peccatis, et offensionibus, et negligentiis meis), regarding which it is the common view that it is not communicable to others.

(iii) By accepting a stipend or offering for a second intention, as explained in (ii), it is our opinion that the celebrant violates the law of canons 825 and 828 and becomes liable to the sanctions of canon 2324. We have heard the opposite view maintained, indeed, but, given the plain terms of the law and the severe penalties attached to its non-observance, it is for the proponents of this liberal view to justify it. For if a second offering may be accepted and justified, why not a third or a thirtieth ?

82.—Mass Offering in England

When exactly was the amount of the usual Mass offering fixed in this country ?

Canon 851, §1: Ordinarii loci est manualem Missarum stipem in sua dioecesi definire per decretum. . . .

§2. Ubi desit Ordinarii decretum, servetur consuetudo dioecesis.

The earliest reference we can find to the amount in this country of a Mass offering is in the *Monita et Statuta* signed by the four Vicars Apostolic, 4 May, 1838, in which, after referring to a "Synod" held by the bishops in that year, it is stated on page 5: "Aequum quidem nobis videtur, omnibus perpensis, et statuimus, 'quinque solidos pro stipendio Missae accipi posse, habita ratione praesentis pretii rerum ad vitam victumque necessarium'." We can find no reference to the subject in the decrees of the Westminster Provincial Councils, but diocesan synods held since have frequently sanctioned this sum, which appears originally to have been fixed by custom. Cf. *Liverpool Synod* 1934, n. 116; *Lancaster Statuta* 1955, n. 91; *Middlesbrough Decrees* 1933, n. 112.

83.—Masses for Deceased Clergy

Would it be safe to hold that a priest is only bound to say these Masses so long as he is personally able to do so? A priest may be bed-ridden or otherwise unable to say Mass for years before his death and to procure the saying of his Pact Masses by other priests may be to him a serious hardship. In most cases it will happen that during a priest's last illness other priests belonging to the Pact die. Is his executor bound to provide for the saying of such Pact Masses?

Any secular priest in England, within three years of his ordination, may join a society whose members undertake to say one Mass for each deceased priest member. At one time it used to include the priests of the whole country, but, owing to the increased number of clergy, the society was divided by a rescript of *Propaganda,* 22 April, i860, into the dioceses of the North and those of the South. At that date the North contained 567 priests and the South 363. It will be noted that, at the present time, the larger dioceses now contain almost as many priests as a whole district in the division of i860. The result is that the obligation of saying the Masses became, we will not say a burden, but more exacting than it was seventy years ago, and a further division was sanctioned by *S.C. Cone.* 3 December, 1938.

We can find no exact definition of the obligation assumed. Our diocesan register contains a statement that members "bind themselves for life to say one Mass, etc.", a rendering of the phrase in the document of 1860, "come obbligandosi a celebrare durante il corso della vita una Mcssa, etc." A more exact understanding of the obligation can be obtained indirectly, from the teaching of the authors and from certain Instructions of the Holy See touching upon the lawfulness of saying one of these Masses when duplicating.

(i) According to Cardinal Gasparri it is not an obligation which binds *sub gravi.*[1] His reason is that the members do not intend to bind themselves *sub gravi* when joining, and he is speaking of these associations in a general manner. Personally we cannot help feeling that the secular clergy of England, when joining, do certainly intend to assume a grave obligation. This can be deduced from the gravity of the subject matter, and from the

[1] *De Encharis/ia,* I, §644.

fact that there is a bilateral aspect involved. Each priest receives the benefit of a number of Masses on the supposition that he has himself rendered this service to his brethren. We agree with Many[1] that the obligation is a grave one.

(ii) It is not a strict obligation of commutative justice. This may be inferred from the various directions of the Holy See, which have decided that an association Mass may be said when duplicating.[2] The reason given in the first of these directions is that the priest does not receive a stipend for these Masses, either directly or indirectly, and that they are due more on a title of charity than of justice. Therefore they do not come under the rule of canon 824, §2. Accordingly, no question of restitution arises, even though a member may be burdened with a grave obligation in conscience to say these Masses. It is the common teaching that restitution refers only to obligations arising from commutative justice.

(iii) Owing to the bilateral character of the pact, it would appear that the obligation is more than "ex caritate", more even than "ex fidelitate vi promissionis". It is, as Cardinal Gasparri states, "ex justitia ratione quasi-contractus".

(iv) With regard to the time limit within which the obligation must be fulfilled, only one thing can be said with any degree of certainty, namely that the rules of canon law requiring manual Masses to be applied within a certain period do not apply strictly to these association Masses. It is a question that must be left to the conscience of individuals.

(v) On careful consideration of the above data, and failing any definite legal ruling, contained, perhaps, in articles of the association which we have not seen, it would appear that a priest who, in his last illness, cannot say Mass at all, is not bound to get these Masses said by others. For the obligation, whatever its character may be, is clearly a personal one. It is also an obligation to be interpreted by the intention of those who assume it. We think that there would be a general consensus of opinion amongst all the members that, in joining the association, they undertook to say these Masses only as long as they were able to do so in person. A sick priest is under no obligation, whether of justice, fidelity or charity, to get them said by others, and, accordingly, his executor is similarly not bound.

(vi) At the time of the latest division of dioceses, 3 December, 1938, the clergy were informed that those who were prevented by sickness from celebrating for more than three months, may satisfy their obligation by the application of one Mass for those associated who died during the period.

§7. DUPLICATION

84.—Duplication: Visiting Priest

May permission to say Mass on Sunday be lawfully refused io a visiting priest, unless be undertakes to say one of the parish Masses, in order to prevent the necessity of duplicating on the part of the parish priest or of bis assistants ?

Df §67.

»5.C. *Cone.,* 14 September, 1878; 6 August, 1881; 5 March, 1887. *Collationes Brueenses* j8q8, p. 641.

Canon 804: Sacerdos extraneus . . . exhibens authenticas et adhuc validas litteras commendatitias ... ad Missae celebrationem admittatur, nisi interim aliquid eum commisisse constet, cur a Missae celebratione repelli debeat.

Canon 806, §2: Non licet sacerdoti pluries in die celebrare missas, nisi ex apostolico induito aut potestate facta a loci Ordinario. Hanc tamen facultatem impertiri nequit Ordinarius, nisi cum, prudenti ipsius iudicio, propter penuriam sacerdotum die festo de precepto notabilis fidelium pars Missae adstare non possit.

The conditions for duplication arc three: (1) that a notable portion of the people will otherwise miss Mass; (2) that there is a lack of sufficient priests to provide for the necessities of the people; (3) that the faculty cannot be given except for use on Sundays and Holy Days of obligation.

The permission will be given either in the *pagella* of diocesan faculties, or by special concession from the Ordinary. But, in both cases, the requisite conditions for its proper use will generally be expressly mentioned; if they arc not mentioned, it must be taken for granted that the faculty may only be used according to the terms of canon 806, §2.

There has always been some obscurity in interpreting the exact force of "penuria sacerdotum". It is not really capable of exact definition, and it must be left to the prudent judgement of the Ordinary, as the canon directs, to decide whether the lack of clergy is serious enough to justify the use of the privilege. There is bound to be some difference of opinion and practice, varying with the customary interpretation of the law in different localities. Thus, a writer in *Collationes Brngenses,* 1929, p. 69, estimates that "penuria" is to be understood not merely with reference to a church, or to a parish, but even to a whole city if it contains several parishes. The professors of a city college, if able to assist the parishes without grave inconvenience, should do so rather than allow the parochial clergy to duplicate. On the other hand, a writer in the *Irish Ecclesiastical Record,* XX, 1922, p. 627, notes that there are "many parishes, in town or country·, in which there is a religious house with, perhaps, several priests, having no Sunday obligations, whilst the parish clergy have to duplicate regularly. Nobody would maintain that the priests in such a religious house would be bound to offer their services or even to comply with a request to assist." To quote one more example, a writer in *rAmi du Clergé,* 1928, p. 363, refers to certain diocesan statutes which expressly withdraw the permission to duplicate, whenever a visiting priest is able to say one of the parish Masses without serious inconvenience.

These differences of interpretation arise from the differences of local custom and necessity. In the Instruction issued by *Propaganda,* 24 May, 1870, the widest powers arc left to local authorities to decide whether the faculty of duplication may be used in any given instance: ". . . lay aside all anxiety and, without being disturbed at the strictness of the terms, trust to your conscience and prudence to judge what cases, account being taken of the circumstances of your diocese, arc to be considered to possess sufficient reasons ... a necessity of this kind must be understood to be a real but still a moral and not an absolute necessity".[1] The directions do not, indeed, refer explicitly to the question we arc discussing, but the same principle and

[1] *IV Westm.,* p. 395; English Tn, p. 94·

the same spirit certainly is to be applied in answering it: the situation outlined in the question is to be dealt with prudently, reasonably, charitably.

(i) In the event of a visiting priest declining to say a parish Mass at a reasonable hour, the parish clergy need have no scruple whatever in duplicating as usual. Their faculty is held for the benefit of the people, and the breach of the law, if any, is on the conscience of the visiting priest. We say "at a reasonable hour" because the unreason is very often on the side of the parish priest, who expects a priest on holiday to say a very late Mass.[1]

(ii) The circumstances of the visiting priest must be taken into account before trying to compel him to say a parish Mass. A complete stranger, staying in the place for one or two nights, is in rather a different situation to one who is making a long stay of several weeks. The latter could rightly be expected to assist. The former could not: he might be resting for a night or two on a journey and, in fact, many parish priests would not care to rely on such a one, even if he were willing to accept the obligation. Similarly, a priest belonging to the diocese could rightly be expected to be more accommodating than one from another diocese. Moreover, a priest taking a necessary rest, or convalescent, should not be expected to celebrate publicly; freedom from public services is the essential part of a holiday to many priests.

(iii) Where there are diocesan statutes regulating the position of visiting priests, permission to say a private Mass could and must be refused, if the case is manifestly within the terms of the statute or the directions of the Ordinary. Otherwise, in our opinion, the parish priest must not refuse permission to a visitor, who has a *celebret,* to say Mass privately, even though his refusal to say a public Mass is unreasonable, according to what has been said under (i) and (ii). We do not think that the proviso "nisi, etc.," in canon 804 covers the action of one who unreasonably refuses a public Mass. The parish priest's remedy is to bring the matter to the notice of the Ordinary who could, if he thought fit, decline to endorse the *celebret* of the visiting priest. It would hardly be worth while taking this trouble except in the case of a visitor who is staying for a long time in the parish.

85.—Duplication in Different Parishes

A visiting priest is asked by two neighbouring parish priests, both having the facility of duplicating, to say one Mass for each of them in their respective parishes. Is this permissible ?

Canon 806, §1 : ... non licet sacerdoti plurcs in die celebrare Missas, nisi ex apostolico induito aut potestate facta a loci Ordinario.

llanc tamen facultatem impertiri nequit Ordinarius, nisi cum, prudenti ipsius iudicio, propter penuriam sacerdotum dic festo de praecepto notabilis fidelium pars Missae adstare non possit. . . .

(i) The question cannot arise unless the usual conditions justifying duplication are verified. The power to duplicate may be granted to certain individuals by Apostolic induit, but more usually it is obtained from the local Ordinary, whose province it is to judge whether the practice is

[1] *du Ckrgi,* 1928, p. 364.

necessary. In many places local diocesan regulations determine exactly when, and by whom, the faculty may be used, in which case one has merely to observe the ruling of the local Ordinary.

(ii) In other places, however, there are no explicit local laws on the subject; the parish priest or his predecessor has received the faculty both for himself and for his assistant clergy, and normally they themselves duplicate every Sunday, except when there is a visiting priest who is willing to say one of the public Masses. Is this faculty personal or local? Unless the Ordinary who concedes it determines otherwise, as it seems he has the right to do, the faculty must be regarded as local; it is not an induit or a dispensation, but a remedy which the common law leaves in the hands of the Ordinary to apply. Thus Brys in *Collationes Brugenses,* 1929, p. 71: "Facultas binandi ab Ordinario concessa non est *personalis,* sed *realis* in remedium pro necessitate, ita ut quicunquc vices agat eius cui facta est, ea, remanente necessitate, uti possit." Cf. also Gasparri, *De Eucharistia,* I, §381; Noldin, *Theol. Moralis,* III, §208.2; *The Jurist,* 1942, p. 285. This interpretation of the law is, we think, quite certain, and is often expressly formulated in local laws. Thus *Middlesbrough Decrees,* 1933, n. 104: "The faculty to binate, granted by the bishop, is to be considered a local privilege, attached to the parish." Accordingly, a parish priest who for any reason is not himself duplicating may authorize a visiting priest to do so.

(iii) We can see no reason why the practice just described must be restricted to the case where the visitor is saying both Masses within the territory of one and the same parish priest. The faculty consists in the right to depart from the rule which forbids more than one celebration daily by each priest, and, provided the conditions for duplication are verified in both parishes, the respective parish priests may lawfully authorize the visiting priest to celebrate in each parish. It is necessary for the conditions to be verified in *both* places, for otherwise the situation cannot be said to come within the terms of canon 860, §2, and the practice seems to be expressly forbidden by *S.C. Cone.,* 10 May, 1897; *Fontes,* n. 4303, ad II: "z\n liceat huiusmodi licentiam concedere presbytero ambas Missas celebraturo in diversis ecclesiis eiusdem civitatis vel loci, in quo et alii sacerdotes celebrant, et hoc etiam si una ex Missis celebranda sit in ipsa ecclesia, in qua et alius sacerdos sacrosanctum Sacrificium eadem dic litat. *Resp.* Non licere; et Ordinarius, quatenus in aliquo ex cnunciatis casibus necessarium iudicet ut Sacrum iteretur, recurrat ad Apostolicam Sedem."

86.—Duplication in Convent Chapel

A community offourteen religious, without enclosure, including one who is too infirm to leave the place, is served by a religious house, the superior of which possesses the faculty to permit duplication whenever necessary. If Mass is not said at the convent, Holy Communion is given, and the majority of the sisters are accustomed to come to the church for a second Mass, whether Mass is said in their chapel or not. Is this a case where duplication is permitted by the common law ?

Canon 806, §2: Hanc tamen facultatem impertiri nequit Ordinarius, nisi cum, prudenti cius iudicio, propter penuriam sacerdotum dic festo de

praecepto notabilis fidelium pars Missae adstare non possit; non est autem in eius potestate plurcs quam duas Missas eidem sacerdoti permittere.

It is apparent that practices are tolerated at the present day which arc, to say the least, a most liberal interpretation of the canon. The Ordinary is the person with whom a decision rests, and what we have to say is not by way of suggesting what he should or should not do. The point is rather to decide whether a priest, already in possession of the faculty, may use it with a good conscience in the above circumstances, without referring the case to the Ordinary's decision. The only argument which might favour the lawfulness of duplication, in the above circumstances, is that the Ordinary has given tacit consent, inasmuch as it is the custom to use duplication faculties in favour of a religious community; the commentators agree that a priest may follow the local custom in using this faculty. It will certainly be found that, in most cases of the kind, the community cannot hear Mass elsewhere without grave inconvenience, which is the meaning to be given to the words "non possit" in the canon. Thus Cappello, *De Sacramentis,* I, §732: ". . . si monasterium, domus pia vel religiosa secus careret Missa, nec in ea commorantes possent sine gravi incommodo ad aliam ecclesiam accedere, nec adsit alius sacerdos". But we cannot detect, in the circumstances outlined above, anything which could be called a *grave incommodum.* Therefore, it is our opinion that the case should be referred to the Ordinary's decision, in order to discover whether or not it is considered to come within the common law.

87.—Duplication on Board Ship

A priest enjoying the privilege of a portable altar, which includes its use on board ship, finds that the Catholics on board cannot bear Mass on Sunday unless he celebrates twice. But he has no faculty for duplicating and it is obviously impossible to seek it from bis Ordinary. May be, in the circumstances, say two Masses ?

Canon 806, §1: Excepto die Nativitatis Domini . . . non licet sacerdoti plurcs in die celebrare Missas, nisi ex apostolico induito aut potesttate facta a loci Ordinario.

§2. Hanc tamen facultatem impertiri nequit Ordinarius, nisi cum, prudenti ipsius iudicio, propter penuriam sacerdotum die festo de praecepto notabilis fidelium pars Missae adstare non possit. . . .

The opinions of some writers are not, strictly speaking, interpretations of the conditions set out in canon 806, but applications of a wider rule which permits the non-observance of a positive law in order to avoid some grave injury. The principle applies to all cases where the appropriate superior cannot be reached for a dispensation, and the present case provides a good illustration.

Dr. Brys, an authority on the law of dispensations, applies this familiar principle of *epikeia* to duplication as follows: "Cum ad Ordinarium pertineat judicare tum de vera necessitate, tum de possibilitate canonica remedia applicandi, licentia huiusmodi per se non potest praesumi. In casu tamen, plane extraordinario et repentino, ut si alter duorum sacerdotum qui in paroecia celebrare solent subito aegrotaverit, nec alius suffici possit, modo

revera urgeat necessitas supra descripta et recursus ad Ordinarium sit impossibilis, praesumi potest Episcopi licentia."[1]

In the case we are discussing recourse to the Ordinary is impossible, and it may be assumed that the situation was not foreseen before the voyage began. The priest has only, therefore, to decide whether there is a real necessity such as canon 806 presupposes to exist. The law forbidding a priest to say more than one Mass is unusually grave and its non-observance may be punished with suspension *f.s.* from canon 2321; some authors arc accordingly unusually severe in determining the kind of necessity which would justify duplication without a faculty, but we cannot find the precise circumstances of this case discussed by any of them.

If the ship has no public chapel, and Mass is being celebrated by a priest with a personal induit of the portable altar, it is agreed that the faithful on board have no strict obligation to obey the precept of hearing Mass, though they may be exhorted to do so; in these circumstances it would be unlawful to duplicate, since canon 806 permits this only in order that the faithful may fulfil their obligation. But if the ship has a permanent chapel, as many of the larger liners have, it enjoys the status of a public oratory and the faithful are bound to satisfy the Sunday precept therein. We are of the opinion that, in this latter case, there is present the kind of necessity which the law contemplates, and that the priest would act rightly in duplicating without express permission from the proper authority.

There is just one other consideration. It may be said, in principle, that the prevention of grave scandal suffices for die non-observance of a positive law, and on this principle a priest might consider himself justified in duplicating without permission in order to avoid giving scandal. But actually we cannot discern this clement in the case as outlined above, since the situation could easily be explained to the faithful and the possibility of scandal removed.

88.—Duplicating: Number Present

It is usually considered that duplication is not permissible except for the purpose of allowing at least twenty people to satisfy their obligation of hearing Mass on Sundays and Holy Days. Is this interpretation too strict? If not, how account for the practice, in some places, of duplicating for less serious reasons?

The diversity, of practice is accounted for, chiefly, by remembering that certain localities have induits which considerably extend the occasions when duplication is permitted by the common law; there is also, from the nature of the case, a certain diversity even in applying the common law, since it is left to the Ordinary's judgement to determine when permission shall be given, i.e. to decide that the conditions required by the common law arc present. Probably the best way of dealing with the above question is first to indicate the most liberal interpretation of the common law permitted by commentators; secondly to give instances of papal induits.

(i) From canon 806, §2, the Ordinary may grant permission provided the three contingencies mentioned therein are all present:

(<j) *penuria sacerdotum.* Priests who obtain permission habitually to

[1] *Collationes Brugenses,* 1929, p. 71.

duplicate owing to the size of their parishes, or other reasons reckoned sufficient in the Ordinary's judgement, are rightly loth to use it if another priest is available. But they may use the faculty, unless the Ordinary directs otherwise, even when there are visiting priests who may be able, though unwilling, to say one of the parish Masses.

(A) *notabilis fidelium pars.* Relying on *S.C. Cone.,* 12 January, 1847, and *Propaganda,* 24 May, 1870, most of the commentators decide that this means about twenty persons. Dr. Brys, writing in *Collationes Brttgenses,* 1920, p. 68, states that no mathematical computation is possible, and we think he is right. The lengthy Instruction of *Propaganda* in 1870/ whilst recording previous directions concerning the number of persons, contains under §14 the following answer given by Leo XII in 1828 to an /Vmcrican bishop: "Omnem te anxietatem animi deponere debere, et quin commovearis verborum rigore, Se (Sanctitatem suam) conscientiae ac prudentiae tuae committere, ut iudices, quibus in casibus, ratione habita adiunctorum dioecesis tuae, graves adesse causae censendae sint, facultatem, de qua sermo est, sacerdotibus impertiendi. Ubi vero has causas graves secundum conscientiam prudentiamque tuam arbitratus fueris, Sanctitas Sua posse te absque ulla dubitatione ea facultate uti benigne declaravit."

(c) die festo de praecepto. This is the clearest and least debatable of the conditions in the common law. Nevertheless, there is good opinion for the view that where a centenary custom exists allowing duplication on the suppressed feasts which now are not *de praecepto,* Ordinaries may tolerate the continuance of the custom.[1]

It must be remembered that the Ordinary is the person with whom the decision rests. Unless his interpretation of the above conditions is well known, priests may follow the local custom in using the faculty, relying on the tacit consent of the Ordinary, or they may refer doubtful cases to him for a solution.

Moreover, the liberal opinions given by some writers are not strictly interpretations of canon 806, §2, but applications of a wider rule which permits the non-observance of a positive law in order to avoid some injury. Thus Génicot permits duplication on the part of a parish priest who discovers too late that a large assembly of the faithful, on an occasion of some solemnity, will otherwise be deprived of Holy Communion.[3]

(ii) The practice of relieving the severity of a law by granting induits is responsible for much of the development to which we are accustomed. Communion of the sick non-fasting, once a matter of obtaining an induit, is now the common law of canon 858, §z. Similarly permission for duplication, within the terms of canon 806, §2, was once obtained only by induit. Just as induits may be granted, extending the non-fasting law to cases not contemplated by the common law, so also with regard to duplicating. Examples of such induits which have come to our notice arc: in favour of certain Confraternities of the Sacred Heart in the smaller parishes of Bruges ;[4] duplication on the first Friday of each month;[5] the privilege obtained for

[1] *Fontes,* n. 4877.

[2] Clacys-Bouacrt, *Jus Canonicum,* II, n. 81.

[3] *Casus,* 1958, n. 747.

[4] *Collationes ftrugenses,* 1929, p. 75.

[5] Cambrai and other dioceses, *Documentation Catholique,* XXXIII, 1935, p. 943; XXXVII, 1936, p. 1459.

priests to say three Masses in countries which are suffering persecution;1 the permission given to priests who, during Eucharistic Congresses, are supplying for their absent brethren.2

Usually, Ordinaries who are granted these induits are required to report to the Holy See on the good or bad effects of their use. An Ordinary who has not obtained an induit may permit duplication *per modum actus* only, according to the terms of canon 81, in cases where the Holy See is accustomed to grant induits.

89.—Duplication Rubric

According to the Instruction S.R.C., 11 March, 1858, printed in the "Rituak Romanum", when a priest binâtes, he must, after the last gospel of the first Mass, look to see if there be any remains of the Precious Blood·, if so, he must carefully receive them. "Quod nullimode omittendum est." The Ritual applies this to the case where both Masses are said in the same church as well as to that when they are said in different churches. But it is the practice in some places to do this, not after the last gospel, but before covering the chalice after the prayer "Corpus tuum, Domine", if there have been a number of communions. This practice does not seem to conform to the Instruction, though it may equally well achieve the desired end. Is it therefore allowable ?

(i) S.R.C., 11 March, 1858, has long been the chief text which the writers have followed in explaining the rites to be observed when a priest duplicates, and it has an added authority from its inclusion in the 1925 *editio typica* of the *Rituale Romanum,* though it is not included in new editions of the Missal. The last two paragraphs as printed in the Ritual are not part of the original decree printed in *Decreta Authentica,* n. $o68, and *Fontes,* n. 5989.

The recent authors we have consulted appear not to have noticed this addition; quoting the decree in its original form, they restrict the direction concerning what is to be done after the last gospel to the case where the second Mass is being said in a different church. Thus, Croegaert, *Caermoniale* (1955), p. 286; Acrtnys, *Compendium Liturgiae Sacrae* (1956), p. 49; *Collationes Tornacenses,* 1957, p. 34. Directions for occasions when the second Mass is in the same church are found in the Missal, after the first Mass of Christmas, after the first Mass on All Souls' Day, and in various decrees J'.R.C.

The two added paragraphs found in the current *Rituale Romanum* preceded by a red sign, make more precise the directions found in earlier sources. The decree begins: "Quando Sacerdos eadem die duas Missas dissitis in locis celebrare debet . . ." The added portion begins: "Quando vero sacerdos eadem die duas Missas in eadem ecclesia offerre debet, se gerat uti supra dictum est . . The conclusion, noted by our correspondent, undoubtedly must be that the action of consuming, after the last gospel, whatever remnants of the Sacred Species remain in the chalice, applies indifferently to all cases of bination. This is supported by the words: "Quod nullimode omittendum est, quia Sacrificium moraliter durat,

1 Cf. Fcrrcrcs, *Tbtol. Moralis,* II, §489, n. j.
2 Pius XI, 7 March, 1924; *A.A.S.,* XVI, 1924, p. 154.

ct superexstantibus adhuc vini speciebus, ex divino praecepto compleri debet , a principle which has equal force whether the second Mass is at a later time in a different place, or whether it follows immediately and at the same altar, as often happens on Christmas Day and All Souls' Day.

This appears to us a correct and valid deduction, though it is not drawn by any of the authors we have consulted, and one does not willingly depart from the common teaching in these matters.

(ii) The original decree preceded the introduction of the Leonine vernacular prayers after Mass. It has been maintained that, since the action under discussion takes place after the priest has completed the Mass, it should be done nowadays after the Leonine prayers. This view may, we think, be followed.[1] But it seems to us incorrect to observe the rubric immediately after the communion of the people. It is true that the purpose is effected quite as well at this time, but the action, though necessary as a precaution, should not be introduced without authority within the Mass, and the direction of the decree should always be literally observed: "completo ultimo Evangelio".

§8. SUNDAY AND FESTAL PRECEPT

90.—Semi-Public Oratory

L· it permitted an extern, not living in the house, to satisfy the Sunday obligation by bearing Mass in a chapel erected for the convenience of a group of secular clergy in a bouse of convalescence ? In my view it is permitted since a chapel erected for the use of a community is semi-public.

The sanction of the local Ordinary is required for a chapel of this kind, and a definite solution of the doubt can only be obtained by consulting him, or the document authorizing the chapel, which should define its status. Failing an authoritative solution, we hazard the following view on the matter. From canon 1188, §2, it is clearly not a public oratory: "ut omnibus fidelibus, tempore saltem divinorum officiorum ius sit adeundi"; nor is it a private oratory: "in commodum alicuius tantum familiae vel personae privatae". Therefore, it must be a semi-public oratory, but not for the reason suggested in the question. The sick priests are not a "community" in the sense of canon 675: "in communi degentes sub regimine Superiorum secundum probatas consuetudines". Living in common under the same roof, as any family might, does not make the individuals into a community in the ecclesiastical sense. If the house is in the charge of a religious community of sisters, the chapel could be regarded as semi-public on this title. But the semi-public oratory, from canon 1188, §2, is one erected cither for a community or "in commodum coetus fidelium eo convenientium". The chapel in question, even though the house is in charge of lay persons, seems to comply with this definition, and is therefore a semi-public oratory in which the Sunday obligation may be fulfilled.

1 Cf. *I'Ami du Clergi,* 1928, p. 767.

91.—Convent Chapel

A parish priest, who for proper reasons is opposed to the laity bearing Mass on Sundays in the convent chapel, informs them that the Sunday obligation is not fulfilled therein unless his permission is first obtained. Is this strictly correct? If not, what rights does he possess in this matter?

Canon 1249: Legi de audiendo sacro satisfacit qui Missae adest quocunque Catholico ritu celebretur, sub dio aut in quacunque ecclesia vel oratorio publico aut semi-publico et in privatis coemeteriorum aediculis de quibus in can. 1190, non vero in aliis oratoriis privatis, nisi hoc privilegium a Sede Apostolica concessum fuerit.

Canon 1188, §2.2: Est vero oratorium semi-publicum, si in commodum alicuius communitatis vel coetus fidelium eo convenientium erectum sit, neque liberum cuique sit illud adire.

(i) A convent chapel is certainly a semi-public oratory; it may occasionally have the status of a public oratory if the faithful possess the right, lawfully acquired, of entering it at the time of divine service.[1] For the most part, in this country, a convent chapel is not a public oratory, but nothing could be clearer than the present common law which establishes the right of the faithful to satisfy their obligation in a convent chapel, the oratory of which is merely semi-public. Not only a parish priest, but even an Ordinary would be acting *ultra vires* in attempting to abolish this common law right, unless entitled to do so by Apostolic indult. We know of no example of such an indult.

In the past the canon law required parishioners to hear Mass in the parish church on Sundays and Holy Days of obligation, but the law had fallen into disuse even in the time of Benedict XIV who teaches: "Integrum hodie omnibus est in qualibet Ecclesia, modo non sit Capella, seu Oratorium privatum, sacris mysteriis interesse, quia consuetudine, in toto Christiano orbe recepta, derogatum est praecepto audiendi Missam parochialem docent Sylvester . . . (theologians and authorities cited) . . . addentes insuper non posse hodie Episcopus praecipere suis subditis ut se sistant Missae parochiali quia non potest delere consuetudinem, quae cum vigeat in toto Orbe, jam induit naturam Juris communis."[2] The right, in these days, depends not on the rather unsatisfactory title of custom, but on the positive law of canon 1249.

(ii) From canon 467, §2, the faithful are to be exhorted to attend the parish church: "Monendi sunt fideles ut frequenter, ubi commode id fieri possit, ad suas paroeciales ecclesias accedant ibique divinis officiis intersint et verbum Dei audiant." Other canons may be cited, as 1546, §1, which suppose that the faithful will attend the parish church at certain times, and notably canon 859, §3, with regard to the paschal precept. But what formerly was a rigid law is now a matter of persuasion or exhortation, and Benedict XIV, in the text already cited, continues to expound the question in this sense. A parish priest, whether secular or regular, is absolutely entitled to persuade the people by every lawful means to attend the parish church. He

[1] Canon 1188, §2.1.
[2] *De Synodo Dioccesana,* XI, cap. xiv, n. 10.

can rely, in the first place, on those canons which expressly urge them to do so. He may particularly make a point of exhorting them to be present at the Mass which is offered expressly for the people by the parish priest every Sunday and on other feast days; the faithful who are having Mass offered for them usually try to be present at it. The corporate and social idea of worship, which is so strong a feature in the liturgical movement, is an added reason why the people should worship in the church which belongs to them as a body. In many cases it is due to the weaker brethren, for the avoidance of scandal, that prominent Catholics at least should be seen publicly obeying the law of the Church. He may also, with perfect propriety, persuade the superior of the convent (supposing the chapel is not a public oratory) to close the chapel to the public on Sundays, or to admit only those who cannot hear Mass conveniently in any other place.

92.—Private Oratory

/I.B. *has the privilege of a private domestic oratory in which Mass is said from time to time on Sundays for her and her family, her servants and her guests staying in the bouse. Do the following persons fulfil their Sunday obligation by attending this Mass:* (i) *a servant living in a detached cottage in the grounds of the house·, and* (a) *a servant living in a rented cottage outside the grounds of the bouse l In both cases the servants are whole-time employees of A.IS, and their services are at her disposal in and about the bouse during the Sundays in question.*

In deciding which persons may satisfy their Sunday obligation in a private domestic oratory, it is absolutely necessary to examine carefully the names or the description of the persons mentioned in the Apostolic induit. This is obtained now from the *Congregation of the Sacraments* which, after previous consultation with the Ordinary, issues it *informa gratiosa* to certain individuals. The common law is contained in Canon 1195,51: "In oratoriis domesticis ex induito Apostolicae Sedis, nisi aliud in eodem induito expresse caveatur, celebrari potest, postquam Ordinarius oratorium visitaverit et probaverit ad normam canon 1192, §2, unica Missa, eaque lecta, singulis diebus, exceptis festis solemnioribus; sed aliae functiones ecclesiasticae ibidem ne fiant." The details are filled in by the induit.

The common form, as given by Many, *De Locis Sacris,* §85, contains the following essential points: it distinguishes between what the commentators call the *indultarii primarii et secundarii,* the first being the person named and his wife, the second being his relatives, servants, guests, etc. But with regard to this second category it is explicitly laid down that they may not satisfy their obligation except when hearing Mass in the presence of cither the person named or his wife, and that, in the case of the servants, the obligation is not satisfied unless their presence is necessary in the service of their master: "Volumus autem ut consanguinei et affines praedicti, missam, ut praefertur, coram oratoribus duntaxat audire, nunquam vero celebrari facere valeant, utque familiares, servitiis suis tempore dictae missae actu non necessarii, aliique omnes, praeter quos memoravimus, ibidem missae huiusmodi adstantes ab obligatione audiendi missam in ecclesia diebus festis de praecepto minime liberi censeantur."

This is the only example we can find of the text of an induit, and the book

containing it is dated 190
differs materially from th
consulted all insist on these distinctions and limitations, and reter the reader back to the older authors, such as Many and Gasparri. The terminology of the document is based chiefly on decrees of Benedict XIV, 7 January, 1741, and 2 June, 1751. The authors are liberal in deciding who is to be reckoned a relative, and what is "necessity" in the case of servants assisting. When the induit is of this ordinary and accustomed type, we may decide that servants mentioned fulfil their obligation, if they hear Mass in the presence of their mistress or her husband, and if their presence is necessary in the service of their employers. "Haec autem necessitas, ut patet, intelligitur de necessitate morali, in eo nempe sensu quod hi famuli sunt necessarii, qui requiruntur pro convenienti decore et comitatu privilegiatorum ... ut si agatur de puella quae egeat ancilla sua."[1]

If, on the other hand, the induit expressly names as *primarii* a number of people such as servants, there is no need to distinguish between those living in the house or outside, on the estate or outside of it, unless the induit makes these distinctions. It is much more likely, in this case, that the chapel, even though owned by a private family, is in reality a semi-public oratory, in which case anyone may fulfil therein the precept of Sunday Mass.

Do layfolk living tinder the same roof as a priest, who enjoys the privilege of a portable altar, fulfil the Sunday precept by assisting at Mass in a bouse where the priest is a guest, even when they could quite easily attend a neighbouring church or oratory ?

The privilege is enjoyed *a iure* by certain ecclesiastics, e.g. by bishops, from canon 822, §2, compared with canons 549, §1.1, and 259, §1.7. In such cases it will be found that the law determines, for all who enjoy the privilege, whether the faithful who assist fulfil their obligation. The episcopal privilege, for example, is so interpreted by 5.R.C., 19 May, 1896, n. 5906: "Postulandum a Sanctissimo, ut, deinceps Episcopi omnes, sive dioecesani, sive Titulares, eodem privilegio condecorentur, quo fruuntur Patres Cardinales; scilicet, ut non solum Ipsi in propriae habitationis Oratorio, aut supra Ara portatili, ubicunque degant, Missam facere aliamque in sui commodum permittere valeant; sed etiam fideles omnes alterutram ex eisdem Missis audientes, quoties opus fuerit, praeceptum Ecclesiae adimpleant."

Canon 822, §2, mentions others who may have this privilege iX *induito.* From the nature of the case, an induit being something which departs from the common law, the only way of discovering whether it covers the obligation of hearing Mass, on the part of those who assist, is by examining the terms of the rescript. The use of the induit is subject to the vigilance of the local Ordinary, as regards the due observance of the Mass rites, but neither he, nor *a fortiori* the local parish priest, may restrict the terms of the papal induit by declaring, for example, that the obligation of hearing Mass is not fulfilled by the faithful who assist, if this is included in the terms of the induit.

1 Many, *De Locis Sacris,* §90, b.

The Ordinaries of South America enjoy a faculty by which priests within their jurisdiction may be given the privilege precisely in order that the faithful may observe the precept of hearing Mass. Accordingly, the conditions for its use are framed to this end: it may be used only in places where no church or oratory exists, and the priest must always preach or catechize the faithful who assist.[1] Army chaplains now have the privilege with no restrictions; during the previous war the text of the faculty was: "Celebrandi Missam super altari portatili in terra, in locis tamen in quibus non adsint ecclesiae vel oratoria privata, vel non pateat accessus ad ecclesias".

Induits obtained by individuals for their personal convenience do not usually contain any restrictions,[2] though some of the commentators who advert to the point teach that, apart from the priest himself and his server, the faithful cannot fulfil the precept by assisting at this Mass; thus Ferreres: "Non satisfaciunt praecepto, ubi Missa fit in *altari portatili* ex privilegio mere *personali*[3]

But there is no settled rule which governs all such induits. We know of one given recently, in exceptional circumstances, which permits all the inhabitants of the house where the Mass is being said to fulfil the precept "quibusvis per annum festis diebus, nullo excepto". Those writers are, accordingly, mistaken who think that the personal privilege of a portable altar never includes the fulfilment of the precept on the part of those who live in the house and are present at the Mass. Limitations arise only when a certain parochial right exists. Whatever may have been the case in the remote past, there is no law requiring the faithful to attend the parish church when fulfilling the precept of hearing Mass. They may be urged to attend the divine offices therein "ubi commode id fieri possit" (canon 467, §2). Examples of parochial rights connected with the celebration of Mass arc funeral exequies (canon 462.5), administering Viaticum (canon 850), or First Communion in places where local law so determines: the portable altar privilege may not be used for such occasions.

It by no means follows that all recently conceded induits are so generous to the recipient, and the above question can be answered exactly, in any given case, only by examining the rescript.

94.—Civilians Attending Military Mass

If on Sunday civilians attend Mass celebrated by a military chaplain for the troops in the open air or in a building which is not a church, public oratory or semi-public oratory, do they satisfy their obligation?

Canon 1249: Legi de audiendo sacro satisfacit qui Missae adest quocunque catholico ritu celebretur, sub dio aut in quacunque ecclesia vel oratorio publico aut semi-publico et in privatis coemeteriorum aediculis dc quibus in can. 1190, non vero in aliis oratoriis privatis, nisi hoc privilegium a Sede Apostolica concessum fuerit.

Canon 822, §4: Loci Ordinarius . . . licentiam celebrandi extra

[1] Cf. *Sjlloge,* n. 145, 8.
[*] Cf. Gasparri, *De Eju-haristia,* 261-272; Cappello, *De Sacramentis,* I, §759.
[•] *TbeoL Moralis,* I, §359.

ecclesiam et oratorium super petram sacram et decenti loco, nunquam autem in cubiculo, concedere potest iusta tantum ac rationabili de causa, in aliquo extraordinario casu et per modum actus.

(i) It is not in dispute that the local Ordinary may resolve any doubts there may be by sanctioning the attendance of civilians at such Masses, declaring their obligation fulfilled. Amongst other conditions for fulfilling the Sunday precept the Mass attended must be *in loco debito,* and the doubt is whether this clause is verified when Mass is said by induit in the open air, and attended by members of the faithful other than those for whom the induit is intended. For the words *sub dio* in canon 1249 must clearly be taken disjunotivcly from those which follow, i.e. an induit is required for celebrating Mass in the open air, but it is not required for the other places mentioned.

(ii) Most of the commentators we have consulted do not advert to the point raised, and one or two who discuss it appear to limit the fulfilment of the obligation to those for whom the induit has been obtained. Thus Prümmer, *Tbeol. Moralis,* II, §482: "Quando ex speciali licentia Missa dicitur in alio loco profano, illi satisfaciunt praecepto pro quibus licentia data est. . . Bouscarcn, *Periodica,* 1939, p. 58: . . . Missa extra oratorium pro eorum necessitate celebrari poterit ex Ordinarii licentia, et sive sub dio sive in decenti aula haec Missa celebratur, omnes pro quibus licentia data est praecepto satisfaciunt."

(iii) The proper course is to obtain the local Ordinary's sanction for the practice, especially if there is some dispute between the military chaplain and the local parish priest, as to the legality of civilians attending a military Mass. It is always open to the parish priest, from canon 467, §2, to urge parishioners to perform their religious duties in the parish church rather than elsewhere.

Supposing, however, that the matter has not been decided by ecclesiastical authority, it is our opinion that civilians may in good conscience attend a military Mass for the purpose of fulfilling the precept, and there are strong reasons in favour of this view. It will be observed, from the terms of canon 1249, that the only place in which the obligation cannot be fulfilled is the private oratory, the intention of the legislator being to secure a due measure of publicity in the observance of this social duty. If it be said that the intention of the legislator has little to do with a proper interpretation of laws, a further principle may be adduced. It is that the obligation of hearing Mass on Sundays has always been joined to the obligation of hearing it in a place where Mass may lawfully be said; the private oratory is an exception to this rule because of a clause attached to the induit permitting the Sunday obligation to be fulfilled only by those named. If, indeed, the military chaplain's faculty to celebrate *sub dio,* etc., is similarly limited by a restrictive clause, it must be said with certainty that none, except the persons named in the faculty, fulfils the obligation at this Mass. But, as far as we arc aware, the faculty is not limited in this way, though it is obviously intended for the utility and convenience of the Forces.

In support of our view we give the text of two manualists who do not, it is true, argue the *pros* and *cons,* but whose teaching is patently in favour of our interpretation. Génicot, *Theol. Moralis,* I, §343: "Satisfit etiam ab omnibus ubi celebratur *sub dio,* puta coram exercitu aut ubi conflit magna multitudo; vel in genere *in loco non omnino privato* ex licentia vel privilegio

non mere personali." Aertnys-Damen, *Theol. Moralis,* I, §jz8: "Sub dio celebrari potest tantum aut ex privilegio aut ex necessitate. . . . Quoties autem sub dio celebratur, qui assistit praecepto satisfacit."

The reasonableness of this interpretation may be seen by taking an instance where Mass is said *sub dio,* etc., without an induit in a case of necessity, c.g. when the parish church is destroyed and the Sunday Mass is said in the open or in any available place for the benefit of parishioners who have no church. No one would maintain that the Sunday obligation can be fulfilled, in these circumstances, only by the parishioners. A military Mass seems to be exactly on the same footing: it is for the troops who have no church of their own. A military chapel attached to a barracks is at least a semi-public oratory and, therefore, from the above canon, a place where any of the faithful may satisfy their obligation; the same, it appears, must be said for a military Mass celebrated by induit in any suitable place.

95.—Mass Precept and Children

S.C. Cone., 14 *July,* 1941, *states that those who have reached the age of reason are bound to hear Mass on Sundays and other days of obligation. Does this modify the existing rule that children who have not yet completed their seventh year, even though they have reached the age of reason, are not strictly speaking bound by this law?*

S.C. Cone. 14 July, 1941, ad 2: (christifidelcs edoccant) de gravi, qua tenentur, obligatione Missam audiendi, quotquot rationis usu compotes sunt, diebus dominicis aliisque festis de praecepto (canon 1248), quum agatur de praecipuo actu cultus externi et publici, Deo debiti. . . .

Canon 12 : Legibus mere ecclesiasticis non tenentur qui baptismum non receperunt, nec baptizati qui sufficienti rationis usu non gudent, nec qui, licet rationis usum assecuti, septimum aetatis annum nondum expleverunt, nisi aliud iure expresse caveatur.

(i) Interpreting canon 12, all the commentators we have consulted deduce that those who, contrary to the legal presumption, have attained the use of reason before the age of seven years completed, are bound by such laws as the Easter precept,[1] or the reception of the sacraments at the hour of death,[2] cither because the law does expressly so determine or because these precepts arc of divine law. We can find no modern author who includes the Sunday precept amongst the exceptions to the plain rule of canon 12. On the contrary, it will be found that, in explaining the Sunday obligation, their teaching is clearly that children under the age of seven are not bound by the law, though parents are recommended to send their children to Mass even before this age.[3]

(ii) If the phrase in the above Instruction of the *Congregation of the Council* is held to reverse this common interpretation, and impose a stricter one, the reason can only be that we have here a law which is not merely an ecclesiastical one, but a precept which is substantially *iure divino,* the external

[1] Canons 859 and 906.
[1] Canons 854, §2, and 940.
[•] E.g. Prûmmcr, *Tbtol. Moralis,* III, §476.

and public worship due to God, an obligation which the Church has more closely determined. We have not yet seen any commentary on this Instruction, but it seems to us unlikely that the Holy See, in the course of a general exhortation to assist at Mass, would introduce, almost as an *obiter dictum,* an interpretation of the law reversing that which is universally held; the text would, at least, call attention to the existing interpretation and reject it in favour of a stricter one. By referring us to canon 1248 rather than to canon 12, it would appear that the Sacred Congregation is merely recalling the substance of the law and is making no new declaration concerning the age of the subject bound to its observance. Pending, therefore, some more explicit directions from the Holy See, it is our opinion that the interpretation given under (i) *supra* may still safely be followed.

96.—School-children Missing Mass

Tbt school-teacher in a day school is accustomed to ask pupils individually, privately or in class, if they bave attended Sunday Mass. Is this in order?

Canon 1113: Parentes gravissima obligatione tenentur prolis educationem tum religiosam et moralem, tum physicam et civilem pro viribus curandi, et etiam temporali eorum bono providendi.

Canon 1372, §2: Non modo parentibus ad normam can. 1115, sed etiam omnibus qui eorum locum tenent, ius et gravissimum officium est curandi Christianam liberorum educationem.

Canon 467, §1: Debet parochus . . . suas oves cognoscere et errantes prudenter corrigere . . . maximam curam adhibere in catholica puerorum institutione.

(i) Our questioner, a school-teacher, asks for the considered opinion of ecclesiastical authority on this question. This we cannot give, needless tc say, but we can attempt to indicate and reconcile the apparently conflicting rights and duties of individuals in the matter. For, on the one hand, it seems that children who culpably miss Mass are being forced to confess a sin, even publicly in some cases, which they are under no obligation to mention except in the confessional. On the other hand, the persons ir charge of their religious education have the right and the duty of seeing that those under their care are educated as Christians; which means, amongst other things, the right and the duty of securing their attendance at Mass on Sundays, and therefore of questioning them about it.

(ii) It is beyond dispute that the obligation of seeing that a child hears Mass on Sunday is primarily and immediately the parents', and there is no violation of the child's right in being questioned on the subject by the parent. If parents arc negligent, it is the right and duty of the parish priest, rcpre.senting the Church, to correct them. "This should be done not in a merely theoretical and general way, but with practical and specific application . . . and with indication of the methods best adapted . . ."[1] Moreover, the parish priest is well within his right in dealing directly W..11 the children, but the order of charity should be observed, as far as possible, by private monition first, as Our Lord teaches us in Matt, xviii, 15;

1 *DMm IHiui.,* C.T.S., p. jj.

the same order should be observed, in the degree and mode of reproof, whenever it appears that the real sinner is the parent rather than the child, which is nearly always the case when young children miss Mass.

(iii) We are reminded in the same encyclical that the school owes its existence to the initiative of the family and of the Church, and that it is by its very nature subsidiary and complementary to them. The teacher stands *in loco parentis,* and in the reasonable use of his powers acts, in the first place, as the parental delegate in questioning children about their religious duties; the delegation is implied in the fact that parents entrust their children to him. He acts, in the second place, as the delegate of the parish priest, and it is precisely as such that he rightly admonishes children about their attendance at Mass, even though negligent parents may, perhaps, resent it. The degree and mode of his action is ruled by the order of charity, exactly as it is in the case of the parish priest himself.

(iv) As is evident, the above analysis of the respective rights and duties of child, parent, teacher and priest is highly theoretical, but we believe it is correct. In practice, obviously, many difficulties will arise. It will often be practically impossible, owing to the numbers involved, strictly to observe the order of charity; or to discern the children who miss Mass through their parents' fault rather than their own; or to pay due regard to the desires and susceptibilities of different kinds of parents. The decision on the best practice to be observed in a given school must, in our view, be that of the parish priest, who is bidden by canon 1372, §2, to act "prudently" in correcting his straying flock. The teacher will usually have no difficulty in accepting the decision, particularly if it absolves him from making any inquisition at all. If the parish priest's decision or direction conflicts with the teacher's own conscience, his remedy is in recourse to the Ordinary.

97.—Local Holy Days of Obligation

Is there an obligation for English tourists in Ireland to hear Mass on St. Patrick's Day?

Canon 14, §1: Peregrini non adstringuntur legibus territorii in quo versantur, iis exceptis quae ordini publico consulunt, vel actuum sollemnia determinant.

(i) The feasts "sub praecepto" for the universal Church arc the ten enumerated in canon 1247, §1. The *Code Commission, xj* February, 1918, decided that feasts not included in this list, even though they have been established as "sub praecepto" by local law, induit, or centenary custom, were no longer of obligation. Accordingly, it has become necessary since 17 February, 1918, for localities desiring to retain some additional feast "sub praecepto" to seek an induit for this purpose from the Holy See. This was obtained by the Irish bishops, 13 May, 1919. The document may be consulted in *Irish Ecclesiastical Pacord,* XIV, 1919, p. 62, and in the Appendix to the *Maynootb Plenary Council,* 1927, n. 112. The episcopal petition contained the following phrase: "Ratio est quia Sanctus Patritius est protector totius Hiberniae et in omnibus civitatibus ac pagis magna devotione colitur."

It is therefore a local law which, to be binding upon visitors (peregrini), must be shown with certainty to be one which takes care of public order. Unhappily, this phrase "quae ordini publico consulunt" has not yet received an authentic interpretation: it appears to have been taken from Tanquere/s prc-Code *Theol. Moralis,* II, §290, though the equivalent is found in many other writers. A full discussion of its meaning may be seen in E.T.L·., 1924, p. 155 (Van Hove); *Irish Ecclesiastical Record,* XLIII, 1934, p. 113 (Kinanc); Onclin, *De Territoriali vel Personali Eegis Indole,* p. 339; *The Jurist,* 1942, p. 105 ; and, of course, in all the commentators on canon 14.

In some cases to which the principle may be applied it is quite evident that public order is involved in a local law, for example, in regulations concerning the ownership of property or the precedence to be observed in ecclesiastical functions; in other cases it is equally clear that public order is not involved as, for example, in laws which promote the interior sanctification or learning of the clergy, or which determine the kind of dress they shall wear; finally, in certain cases, it is not quite clear whether the law affects public order or not, and the present question seems to belong to this category.

(n) It is quite certain that travellers are bound to observe local laws whenever their violation might cause scandal, and some commentators give this sense to the words "quae ordini publico consulunt", c.g. Beste, *Introductio,* p. 72. Strictly speaking, however, the avoidance of scandal is an obligation of the natural law, whereas canon 14 is concerned with positive law and its interpretation. There is no doubt, however, that the above question will usually be answered by applying the principle of avoiding scandal: if the traveller is known to be a Catholic and everyone in the locality hears Mass on St. Patrick's Day, it seems to us that the traveller must also hear Mass in order to avoid causing scandal to the faithful.

But there could scarcely be any question of scandal if the religion of the visitor is unknown in the place where he is staying, and the doubt must then be solved on its own merits, failing any authentic interpretation of the law by the legislator (canon 17, §1). Notwithstanding the phrase used in the petition of the Irish bishops, we think that the law is not one affecting public order, and accordingly visitors from other countries arc not bound to hear Mass in Ireland on St. Patrick's Day unless, by staying away, they cause scandal. Thus Prümmer, *Theol. Moralis,* II, §195: "Quare si ex gr. episcopus praescribit diem festum in sua dioecesi, neque potuit neque voluit obligare nisi subditos suos." Teodori, *Appollinaris,* 1930, p. 3τ8: "Rcmigius non celebrans festum patroni loci non peccavit, quia, prout in §2 can. 1247, ecclesiastico praecepto dies festi Patronorum non subiaccnt. Et etiamsi subiacerent, non peccasset per se, quia utpote peregrinus non tenetur legibus particularibus loci in quo versatur". Cf. *S.C. Cone.,* 9 February, 1924, regarding local fasting and abstinence laws.

The situation is, of course, different when any of the feasts "sub praecepto" in the common law happen to be excluded in the visitor's own country', but not excluded in the place he is visiting: for example, in the United States there are only six, Corpus Christi being amongst those which are excluded. A visitor to this country from the United States is bound to hear Mass on Corpus Christi from §3 of canon 14: "At legibus generalibus tenentur, etiamsi hac suo in territorio non vigeant, minime vero si in loco in quo versantur non obligent."

98.—Transferred Holy Day of Obligation

In 1940 *the feast of St. Joseph* (19 *March') fell on Tuesday in Holy Week and was transferred to* 2 *April, Tuesday in Low Week. The Ordo directed that the obligation of assisting at Mass remain on* 19 *March. Assuming this is correct, what is the origin and meaning of this rather strange ride ?*

This feast is not observed as a Holy Day of obligation in England, but it is amongst the feasts enumerated in canon 1247 for the Universal Church, on which days the faithful arc bound to hear Mass; it is observed as a Holy Day of obligation in Scotland. There is not the slightest doubt that the local Ordo is correct, for 19 March that year was marked as a day of obligation in the calendar of the Universal Church.

The rule is clearly expressed by De Herdt: "Si transferatur festum, quod feriationem annexam habet, non transfertur feriatio, sed haec servatur eo die, quo festum cadit."[1] On a similar principle the indulgences attached to a feast which is temporarily transferred remain on the *dies a quo* not on the *dies ad quern*[2,] likewise, from canon 339, §3, the obligation of *Missa pro Populo* remains on the *dies a quo* whenever the obligation of hearing Mass remains on the *dies a quo.* Canon 539, §3, assumes the possibility of the obligation of hearing Mass being transferred together with the feast. It is purely a matter of positive law so directing, but we know' of no modern instance of this happening. On the contrat)·, all the rulings known to us direct that "feriatio" or "Mass obligation" is not transferred, e.g. *S.R.C.*, 20 March, 1706, n. 2164; 10 December, 1773, n. 2305; 2 September, 1903, in *Periodica,* 1911, p. 284. If the feast in question falls on Good Friday, the obligation of hearing Mass is extinguished altogether, since there is no Mass on that day; if it falls on Holy Saturday, those should be present at Mass who can do so with convenience.

Actually, 19 March can never coincide with Good Friday or Holy Saturday. In 1693 it fell on Holy Thursday, and the ruling of the *Congregation of Rites* for that occasion is still the only direction of the Holy See explicitly applying the rule of non-transference of Mass obligation to the Feast of St. Joseph. The text of the instruction, JT.R.C., 13 September, 1692, n. 1883, provides, incidentally, an interesting liturgical ruling, since it sanctions a departure from the law which permits only one Mass on that day: "Officium transferendum esse ad alium diem, iuxta Rubricas Breviarii Romani et Decreta ipsius Congregationis; ceterum praeceptum audiendi Missam et vacandi ab operibus praedictis non esse transferendum, sed servandum esse praedicta Feria V Maioris Hebdomadae, adeoque per Ordinarios locorum accurate providendum, ut eo die aliquae Missae privatae, ante celebrationem solitae Missae Convcntualis, celebrandae pro praecepti impletionc non desint; sed tamen praeterea antiquus mos communionis Cleri in Missa solemni cius dici, quo Ecclesia SSmi Eucharistiae Sacramenti institutionem et memoriam recolit, summa religione hactenus retentus nullatenus omittatur." March 19th will next occur on Holy Thursday in the year 2285.[3]

[1] *Sacrat Ljturgiae Praxis,* Π, §280.
[1] 5. *Pomit.,* 18 February, 1921, interpreting the rather obscure directions of canon 922.
[3] *Periodica,* 1939, p. 160.

To suggest a meaning or reason for this rule is, perhaps, a hazardous enterprise. Fr. Hanssens, S.J., writing in *Periodica,* 1939, p. 163, distinguishes between a "sacred fact", as some mystery of Our Lord's life or the *dies natalis* of a saint, and the corresponding "liturgical office" proper to that day; the latter is transferred, but the former, which is always mentioned in the martyrology on the *dies a quo,* remains commemorated on that day. "Dubium igitur non est quin die a quo translatum est festum, non autem huius feriationis obligatio, sacrificium eucharisticum offeratur etiam in honorem facti sacri, puta natale S. losephi, cuius festum est translatum, quamquam mirum videri potest quod missa in honorem alicuius facti sacri offerri debet cuius 'officium' prorsus omittatur et in alium diem translatum sit." It would follow, observing this distinction, that even on Holy Thursday the Mass is offered in honour of St. Joseph, a conclusion which it is a little difficult to accept.

But another reason suggested for the rule is "propter bonum commune", and this appears to us to be the most likely explanation. The faithful know that they have to hear Mass on a certain date, and they cannot be expected to be aware of the feast's translation to some other day; the knowledge of such things can be acquired by an expert compiler of an Ordo only after prolonged study of the rules governing the transference of feasts. In order to avoid confusing the minds of the people, the obligation of hearing Mass is left on the *dies a quo.*

99.—Christmas and Sunday Obligation

Assuming that the first Mass is permitted during the afternoon of Christmas Eve, which falls on a Sunday, will presence at this Mass suffice also for the Sunday obligation ?

Canon 18: Leges ecclesiasticae intelligendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos Codicis parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum.

(i) The *Motu Proprio, 1* December, 1940, introduced a new practice by sanctioning the celebration of the first Mass of Christmas Day on the afternoon of the vigil; in so far as it permitted Mass in the afternoon, it merely extended a practice already sanctioned, even before the war, in places such as Mexico and Russia. The six norms accompanying this document gave rulings for certain contingencies, but the interesting problem of this question is not amongst them. We have received, however, from unofficial sources, a Roman decision that the afternoon Christmas Mass does not satisfy the Sunday duty. The faithful, unless excused by the kind of grave inconvenience which exempts them from observing the Sunday precept, are all bound to hear Mass on the morning of Sunday, 24 December, even though they intend to be present at the afternoon Mass. For the obligation of Christmas Day is numerically distinct from that of the Sunday: the latter finishes at midday and the former may be fulfilled at the appropriate hour in the afternoon. This numerically distinct character of the two ecclesiastical days, notwithstanding their coincidence within the twenty-four hours of one

day, is evident, firstly, from the fact that the Christmas Mass is an anticipation; and, secondly, from rule vi of the *Motu Proprio* which permits the reception of Holy Communion at the afternoon Mass, even though one has already communicated that same morning. Similarly, in reciting divine office, a priest who anticipates Matins is bound to recite Matins twice during the same twenty-four hours.

(ii) It might, however, be said for the opposite and more liberal view that one Mass ought to suffice for both obligations, since it has always been agreed that one is not bound to hear two Masses when a Holy Day of obligation falls on a Sunday. The principle as formulated, e.g. by Prümmer, *Theol. Moralis,* I, §224, is that two precepts may be satisfied by one act provided they are materially and not formally diverse, and provided the legislator has not directed to the contrary. They are formally diverse if imposed for a diiferent reason: thus, one recitation of divine office satisfies the obligation arising both from Holy Orders and from a benefice, because the motive behind both laws is the same, namely the worship of God by reciting the canonical hours; but one day of fasting docs not satisfy the obligation arising from ecclesiastical law and from a sacramental penance, because the motives are diverse. When a Holy Day of obligation falls on Sunday, one Mass suffices for both, because the motive, which is the sanctification of that day, is identical.

The answer to this contention is that our present problem is not analogous, since the question is not of sanctifying "the day" but of sanctifying two separate days, and the Sunday obligation expires at midday.

(iii) But what of those favoured persons who, by a special induit, habitually assist at the Sunday Mass in the afternoon ? May it not be held that, in their case at least, the anticipated afternoon Christmas Mass satisfies the Sunday obligation as well ? Otherwise, they will be bound to assist at two Masses that afternoon, which is rather unreasonable.

One could reply, of course, that they are not actually bound to hear Mass twice that afternoon: the other Christmas Masses will presumably be on Christmas afternoon. But, from a strictly legal point of view, the situation seems to be covered, perhaps, by applying the rule about the choice of times in fulfilling obligations. If the Christmas midnight Mass is said, say, at 4 p.m., it means that this hour is midnight legal time: having chosen to use this legal time for fulfilling the Christmas obligation, one may not choose some other time reckoning for fixing the Sunday obligation at the same hour. Consider the situation which arises in any place which has a legal time during the winter, even when there is no special privilege for midnight Mass in the afternoon of Christmas Eve. Midnight Mass will be at 12 midnight legal time, which is 11 p.m. mean time. It would not occur to anyone, we suppose, on occasions when Christmas Eve falls on Sunday, to use the faculty of canon 55, §1, for deciding that one Mass will suffice both for the Sunday obligation at 11 p.m. mean time, and for the Christmas obligation at 12 midnight legal time.

§9. PRAYERS AFTER MASS

100.—Omission of Leonine Prayers

What are the various occasions on which the usual vernacular prayers., recited at the end of low Mass, are omitted?

(a) After a conventual Mass {Missa conventualis sine cantu), that is to say, the Mass celebrated daily in connexion with the choral office in those churches where the office is an obligation.[1]

(/>) On Christmas Day after the first and second Masses, if the three are being said without the priest departing from the altar. It suffices "si dumtaxat peragantur quoties ab altari disceditur, sive discessio post primam Missam, aut post secundam, aut demum post tertiam fiat."[2] Moreover, they are to be omitted even after the last Mass on Christmas Day, if it is a sung Mass and follows immediately after the second Mass.[3]

G") *After a votive Mass of the Sacred Heart* on the first Friday of the month, when it is celebrated "cum privilegiis Missae votivae solemnis pro re gravi".[4]

(d) After Masses celebrated according to the Memoriale Rittatm in small churches. There appears to be no definite ruling of the *S.R.C.* on this point, but the omission on such occasions as Candlemas Day is consistent with the principle governing all the other authorized exceptions, i.e. the low Mass is *in place of* a solemn Mass or it is accompanied by some external solemnity.[5] t

(e) After a Mass which has been celebrated with some unusual solemnity. The decree n. 4505, in addition to the matter just discussed, answers affirmatively to the query: "An attentis 5.R.C. Decretis η. 5697, Ordinis Min. Capuccinorum, 7 Decembris, 1888, ad VII, de Missa Convcntuali sine cantu, et n. 4271 Baion. 8 Junii, 1911, ad II, de Missa votiva lecta SS Cordis Jesu, prima feria cuiusvis mensis, etiam aliqua similis Missa lecta, ex. gr. occasione primae communionis generalis, sacrae confirmationis aut pro sponsis, haberi possit ut solemnis, eique applicari valeant praefata decreta quoad preces in fine Missae, a Summo Pontifice praescriptas, omittendas." It is clear that the *S.R.C.* docs not wish to give a list of the occasions of "some solemnity" when these prayers may be omitted. Therefore, in addition to the examples cited in the query, one may rightly include such occasions as the first Mass of a newly ordained priest, or the Mass of a sacerdotal jubilarian.

(f) lichen the Mass is immediately followed by some sacred function·. "Si Missa cum aliqua solemnitate celebretur, vel Missam, q tin celebrans ab altari recedat, immediate ac rite subsequatur aliqua sacra functio seu pium

[1] J.R.C., n. 5697.7. The parochi.il Mass is not includcil unless it is immediately preceded by recitation of the Office: n. 5858.

[2] N. 5705.

[3] N. 5936, i.

[4] N. 4271. Cf. Q. 70.

[5] Cf. *I'Ami du Clergi,* 1934, p. 220, quoting *Ephemerides Ltturgicae,* 1929, p. 121; 1951,

exercitium."[1]* This rule certainly applies to a Requiem Mass which is followed immediately by the Absolution, but the wording is not decisive and has given rise to many doubts concerning what is "pium exercitium" and "sacra functio".

Some functions and exercises are *not* included, namely:

(i) The distribution of Holy Communion immediately after Mass.'

(ii) The occurrence of community prayers or meditation or spiritual reading after Mass.[3]

(iii) The recital of *De Profundis* or other prayers for the dead.[4]

Explanatory of n. 4505 there is a decree, 25 November, 1932, which has not been officially published but has been reprinted in various journals from *Ephemerides Eiturgicae,* 1935, p. 537. After citing the contradictory tenor of some previous decrees two questions were put: I. An decretum diei 20 Junii, 1913, η. 43o 5› interpretationi authenticae diei 23 Novembris, 1887, n. 3682, derogaverit? II. Et quantenus negative, num decretum diei 2 Junii, 1916, veluti abrogatum censendum est, an vero vigeat etiamnum tum hoc ultimum, tum praecedens anni 1887? *Resp.* ad I. Negative. Ad II. Negative ad primam partem, affirmative ad secundam."

A further decree on the subject is printed by *Ephemerides Eiturgicae, Jus et Praxis, 1959,* p. 102. It is dated 16 May, 1939, and we read ad XX:

"luxta decretum n. 4305, diei 20 Junii, 1913, post Missam lectam si adsit occasio specialis circumstantiae vel immediate post Missam lectam sequatur aliqua functio sacra, omitti possunt preces a Summo Pontifice Leone Papa XIII praescriptae. Quia sunt, qui de omittendis precibus his diversam teneant sententiam, quaeritur:

Possunte omitti post Missam lectam illae preces, si sequatur:

(1) Praedicatio ex ambone; (2) cantus hymni: *Te Deum',* (3) preces novemdiales ad Spiritum Sanctum ante Pentecosten iuxta decretum n. 4271, ad 6; (4) Litaniae Laurctanae, quae iussu S. Patris Leonis Papae XIII integro mense octobri recitato infra Missam s. Rosario statim post Missam a celebrante dicendae sunt; (5) preces pro sanctificatione cleri prima feria quinta vel primo sabbato cuiuslibet mensis; (6) quando aliquae preces ab Excmo RR. DD. Ordinario loci post Missam institutae sunt? *Resp.* Consulat probatos auctores.

The Holy See refers the questioner to approved authors, and the commentator of *Ephemerides Eiturgicae* suggests the following answers: "Ad I. Negative; Ad 2. Negative; Ad 3. Affirmative; Ad 4. Affirmative; Ad 5. Affirmative; Ad 6. Quaenam sunt preces ab Ordinario imperatae? Si agitur de vera *functione* affirmative, secus negative."

The writers in *Ephemerides Eiturgicae* arc certainly of great authority and these solutions may be followed. But we may be permitted to query the reply to the first instance, deciding that the Leonine Prayers may not be omitted if a sermon follows immediately after low Mass. A consultor of the J.R.C., in *Ephemerides Eiturgicae,* 1933, p. 558, gave a description of what is meant by a sacred function and it included preaching: "decretum 4305 permittit (ut preces omittantur) in fine missae privatae quae celebratur

[1] N. 4joj.

[1] N. 3682, and 2 June, 1916.3. This portion is not reprinted in *Deirefa Autbentiea,* n. 4557-. ›

* Cf. 2 June, 1916.2.

• N. 3805.

occasione extraordinariae circumstantiae, . . . si immediate post Missam idem sacerdos, quin ab altari in sacristiam redeat, aliquam sacram functionem seu pium exercitium peragat, c.g. sermonem ad populum habeat".

101.—Method of Reciting Leonine Prayers

It is agreed that it is more becoming for the priest to take the chalice from the altar after reciting the prayers, but can it be said that he is breaking some law or rubric in reciting the prayers whilst holding the chalice ?

Without suggesting that the celebrant is guilty of a grave negligence of rubrics in reciting the prayers whilst holding the chalice, it appears to us that the practice is wrong, not merely because it is unbecoming, but because the rubrics cannot thereby be rightly observed. If the priest needs the card to read these prayers, the rubric, R/7. *Celcbr. Miss.,* XII, 6, is broken by holding the chalice with the left hand and the card with the right: "sacerdos accipit sinistra, calicem, dexteram ponens supra bursam, ne aliquid cadat". If this objection is avoided, when the priest knows the prayers by heart, the practice is still unrubrical; for prayers are always to be recited with hands joined, failing directions to the contrary, for example, in those parts of the Mass where the hands arc extended. All the writers on rubrics, so far as we are aware, reprobate the practice of holding the chalice whilst reciting the prayers.1

Supposing that the priest follows the more becoming procedure, should he descend directly from the gospel corner, or should be first go to the middle of the altar and bow to the cross ?

"Sacerdos, expleta Missa, debetne se inclinare Cruci Altaris, antequam descendat ad praescriptas preces recitandas? *Ikesp.* Inclinationem, de qua in casu, non praescribi neque prohiberi. . . ."2 Some commentators, as Aertnys, direct the celebrant not to go to the middle of the altar, though he may, if he wishes, do so and bow to the crucifix. They rely for this direction on the above reply of the T.R.C. Actually the reply deals solely with bowing to the crucifix or not bowing, and it appears to many to be more fitting, and in accordance with the rule at the beginning of Mass, for the priest to descend from the middle of the altar; he may bow or not as he pleases.

If be has to five Holy Communion immediately after the last gospel, should the prayers be said before or after distributing l loly Communion ?

"Utrum preces praescriptas in quibusdam casibus, nempe vel alicuius parvae functionis vel Communionis distribuendae, peracta demum ista Missae ceremonia, recitare liceat; an subsequi Missam semper immediate

1 Aertnys, *Compendium,* §45; Croegaert, *Caeremcniale,* 11, p. 128; *Periodica,* 1956, p. 154.
•XR.C., 18 June, 1885, n. 3657.8.

debeant? *Resp.* Preces . . . recitandae sunt immediate expleto ultimo Evaogelio."[1]

102.—Leonine Prayers: Russia

Is it obligatory, or at hast permissible, to add to the accustomed prayers the invocation "Saviour of the world. Save Russia" ?

The prayers were first introduced for the papal territories by Pius IX, in 1859, at the time of the spoliation; they consisted of a triple *Ave,Salve Regina,* and the first prayer. Leo XIII, 6 January, 1884, made these prayers obligatory throughout the world, except after sung Masses, for the liberties of the Church. The second prayer was added, and the order repeated in 1886. Pius X, 17 June, 1904, permitted the triple invocation to the Sacred Heart.

Since these prayers had in view the liberties of the Roman Church, many expected or desired that they would be allowed to cease once the Latcran Treaty came into force. But Pius XI, in a secret Consistory, 30 June, 1930, made the following declaration in his allocution: "Christo igitur humani generis Redemptori instandum, ut afflictis Russiae filiis tranquillitatem fideique profitendae libertatem restitui sinat; atque ut instare omnes, modico sane negotio atque incommodo, queant, volumus quas fel. rec. decessor Noster Leo XIII sacerdotes cum populo post sacrum expletum preces recitare jussit, caedem ad hanc ipsam mentem, scilicet pro Russia, dicantur; idipsum Episcopi atque uterque clerus populares suos, vel sacro adstantes quoslibet, studiosissime moneant, in eorumdemque memoria saepe numero revocent."[2]

We are therefore directed to recall the purpose of these prayers to the faithful assisting at Mass, but we are not ordered to recite any invocation. The invocation "Salvator mundi, salva Russiam" is indulgenced with three hundred days,[3] and it may be that this indulgenced invocation is ordered in some dioceses, or it may have been introduced and become customary as a method of observing the papal direction: "adstantes quoslibet studiosissime moneant". We have no information on these points. If not ordered locally, or if it is not customary, we are of the opinion that it should not be introduced, since the indulgence contains no reference to reciting it after Mass, and there does not appear to be any general authorization permitting this to be done.

103.—Leonine Prayers: Indulgence

Is there an indulgence attached to these prayers ? If so, it would appear that the faithful do not gain the indulgence unless they actually recite the prayers, since it is the rule that prayers to which indulgences are attached must be saia vocally.

On 30 May, 1934, the *Sacred Penitentiary* issued a decree stating that the

1 5.R.C., 25 November, 1887, n. 3682.
l A.A.S., XXII, 1950, p. 301.
• 5. *Ptxnif,* 24 November, 1924; *Preces et Pia Opera,* n. 584.

Holy Father had attached to these prayers an indulgence of ten years: "ad incitamentum quoque fidelium qui Missae intersunt, ne ab Ecclesia discedant antequam sacerdos omnia compleverit quae Sacra Liturgia ipsi absolvenda mandat, et antequam ipsi simul cum sacerdote easdem persolverit orationes". The decree stated, further, that the indulgence of seven years attached by Pius X to the triple invocation "Most Sacred Heart of Jesus, have mercy on us" remained in force.[1]

The doubt arises from the fact that, in most places, the priest alone recites the prayers. It is true that mental prayer does not, as a rule suffice for indulgences, though it may be noted that a recent decree of the *Sacrea Penitentiary, η* December, 1933, makes an exception for ejaculatory prayers. But canon 934, §3, resolves this point and the ruling has often been repeated, for example, in the instructions given for prayers to be recited during Jubilees. "Ad indulgentiarum acquisitionem satis est orationem alternis cum socio recitare, aut mente cam prosequi, dum ab alio recitatur."

104.—Sacred Heart Invocation after Mass

May it be said that, in principle, this triple invocation is obligatory whenever the Leonine Prayers are obligatory, and that it should be omitted when the latter art omitted? May all these prayers be recited kneeling on the predella?

S.C. Indnlg., 19 August, 1904: Quamvis obligatio proprii nominis a Summo Pontifice imposita non sit, vult tamen Beatissimus Pater, ut uniformitati consulatur, ac proinde singuli sacerdotes ad cam invocationem recitandam adhortentur.

Canon 28: Consuetudo praeter legem, quae scienter a communitate cum animo se obligandi servata sit, legem inducit, si pariter fuerit rationabilis et legitime per annos quadraginta continuos et completos praescripta.

(i) The triple invocation, to which an indulgence is attached[3], was sanctioned by Pius X, through *S.C. Indnlg.,* 17 June, 1904: ". . . precibus, quae iussu s.m. Leonis XIII post privatam missae celebrationem persolvi solent, ter addi possit sequens invocatio .. .". From this phrase, and from the express declaration, 19 August, 1904, no strict obligation exists, because no law was made ordering the triple invocation. But priests everywhere naturally did what they were exhorted by the Holy Father to do, and it would probably be true to say that most priests have always thought that the triple invocation was of the same obligation as the Leonine Prayers. Having recited it for forty years, it would appear that we have now made the custom a law from canon 28, though it is arguable whether the clause "cum animo se obligandi" is verified.

On the principle "accessorium sequitur principale" we think that the invocation is to be said when the Leonine Prayers arc said, and omitted when they are omitted.

(ii) 0\R.C., 18 June, 1885, n. 3637.8: "in recitatione precum genuilcctendum pro lubitu sive in suppedaneo, sive in infimo gradu Altaris".

[1] *Preces et Pia Opera,* n. 628.
[1] *Ibid.*

105.—Domine Salvum Fac Regem

Canyou state whether the "Domine salvum fac Regem" is ordered to be said or sung after the principal Mass on Sundays·, or is it only recommended by the Bishops? If the principal Mass on Sundays is not a sung Mass, is the order or recommendation still in force ?

The prayer for the King is obligatory unless the local Ordinary allows it to be omitted. We are not aware of any document, applicable to the whole of England, ordering the prayer to be said. Before Cardinal Wiseman's time various unliturgical practices were current in this country. In some places the name of the king was placed in the Canon of the Mass, in other places a special Post-communion prayer was added. Cardinal Wiseman objected to these usages and introduced, with Roman sanction, the prayers to which we are now accustomed. Ward, in his account of the subject, says that they were made obligatory, but no official document is mentioned and the subject is not dealt with by the Provincial Councils.1 But even though there is no formal decree on the subject, we are of the opinion that the recitation of the prayer is now a custom which has all the force of the law. In addition, its place in the *Ritus Servandus,* issued with the authority of the English bishops, argues that it is of obligation.

It is, in many places, a diocesan law. Thus, *Westminster Synod,* XXXII, 1895, made the following direction: "The Prayers for the Queen arc to be said or sung, in Latin or in English, after the principal Mass on every Sunday, but not on other days of obligation. These prayers are not left to the discretion of the clergy; but are of strict obligation in every public church throughout the diocese." *Liverpool Synod,* 1934, directs in n. 198: "Diebus dominicis post Missam principalem, in omnibus ecclesiis et oratoriis publicis aut semi-publicis pro rege dicendus est vel cantandus, sive latine sive anglice, versiculus *Domine salvum fac* cum responsorio et oratione consueta." The folium of Nottingham decrees, issued in 1924, directs the prayer to be in the vernacular, the one "O God by whom kings reign" in the *Manual of Prayers.*

It will be seen from these texts that the obligation is after the *principal* Mass, whether sung or not.

§10. SERVER AND CONGREGATION

106.—Celebrant Without Server

What are the chief modifications in the words and actions of the celebrant when he is celebrating Mass without a server ?

The rite to be observed on these occasions is described in the following official texts:

* T2* *Stqud to Catbolic Emancipation,* I, p. 201.

Kit. Celcbr. Miss. IV, 2: Si minister, vel qui intersunt, Celebranti non respondeant *(Kyrie eleisonypse.* solus novies dicit.

Ibid., VII, 7: *(Orate Fratres)* . . . alioquin per seipsum, dicens: *Sacrificium de manibus meis.*

Ibid., VI, i : Quibus dictis *(Graduale,* etc.) Sacerdos, si privatim celebret, ipsemet, seu minister portat librum Missalis ad alteram partem Altaris in cornu Evangclii, et dum transit ante medium Altaris, caput Cruci inclinat. . . . 2: Locato Missali in Altari, Celebrans redit ad medium Altaris . . . dicit secreto *Munda cor meum.* . . .

5.R.C., 4 September, 1S75, n. 3368.1 : Si Sacerdos celebrat sine ministro, debetne bis dicere *Confiteor* ante Introitum ? *Kesp.* Negative.

14 January, 1898, n. 3975.2: Utrum etiam in Missa privata debeat Sacerdos genuflcctere quando, defectu ministri, ipse transfert Missale. . . . *Kesp.* Negative.

From these instructions, or on analogy drawn from them, the principle is that the priest himself recites the server's responses, modifying the *Suscipiat* as indicated, and saying the *Confiteor,* etc., as the Breviary directs when office is recited alone, omitting *vobis fratres* and *vos fratres* and saying *Misereatur nostri.* In addition, it will be necessary to prepare the altar furniture by placing the cruets and communion plate within reach. For the ablutions there are no official instructions: the priest may purify the fingers of each hand separately by changing the cruet to the left hand, or he may purify the fingers of the right hand by dipping them in the chalice; for the *Lavabo* a small vessel filled with water is convenient. Cf. O'Connell, *Celebration of Mass,* II, p. 212.

107.—Weekday Mass without a Server

May a priest say Mass on a weekday in the presence of some of the faithful, none of whom is able to serve or even answer the responses ?

Canon 813, §1, formulates the law which forbids a priest to celebrate without a server. It is a grave law, but like any other positive precept it does not bind *cum gravi incommodo,* and such things as the necessity of Viaticum or observance of the Sunday precept are universally admitted as providing a sufficient reason for not observing the law; also special occasions as, for example, a nuptial Mass, or a First Friday Mass at which there is a large concourse of people. An ordinary weekday Mass, attended by a few devout people, docs not normally present any contingencies which would justify the non-observance of the law, in our opinion.[1] But it is ultimately a matter for the conscience of the priest to determine whether a *grave incommodum* exists, e.g. fear of scandal.

As in many questions of this kind, the quandary is theoretical rather than practical. For, in practice, it should be possible to find a man who could Serve even though unable to make the responses, which all the authors permit for any reasonable cause; or it should be possible to find a woman who could respond to the best of her ability at the altar rails. lY. for the sake of argument, neither of these courses is possible, and a server is

1 Cf. *Ecclesiastical Review,* September, 1954, p. 299.

habitually lacking on weekdays, the priest should seek an induit for celebrating without a server. This could, doubtless, be obtained through the Ordinary, and in foreign missions the faculty is granted in the usual formula which all Ordinaries enjoy in those places. We imagine that most priests, rather than go to the trouble of applying for an induit, would find it more convenient to teach the Mass responses to those few devout persons who assist at Mass during the week.

108.—Mass Without Anyone Present

Does the faculty granted to army chaplains, permitting them to celebrate without a server, mean that they may do so without anyone at all present?

We always try, if possible, to give a liberal solution to doubts and problems presented, and the army chaplain is particularly entitled to any justifiable interpretation of the law which will make smooth his difficult path. We have, therefore, made an investigation of all the available commentaries on canon 813 and *De Defectibus*, X, 1, and have found only one writer—an anonymous contributor to the *Ecclesiastical Review,* X, 1919, p. 550—who favours the liberal view to some extent: "The same reasons," he writes, "which allow a priest to dispense with a server also permit the celebration of Mass without any other person present in the church." It will be observed, however, that he is not commenting on the meaning of an induit permitting Mass "absque ministro inserviente", as in n. 7 of the faculties, but simply applying the common principle that no positive law binds *sub gravi incommodo·,* that is to say, any priest would be entitled to say Mass not only without a server but with no one present, if it were necessary, for example, in order to give Viaticum to the dying. There is no doubt whatever that army chaplains may often be confronted with this emergency, in which case they would rightly say Mass alone, even though the permission to celebrate without a server were not contained in the faculties.

All the other writers we have consulted do not advert to the point: they discuss the reasons permitting the absence of a server, and appear to take it for granted that there will be some other persons present.

The following are the reasons which lead us, with regret, to adopt the stricter view. Induits similar to that contained in n. 7 of the faculties arc often obtained by individuals, and an example may be seen in *Periodica,* 1913, p. 43: ". . . benigne induisit (S. Rituum Congregatio) ut, ob defectum ministri et in casu necessitatis supradictus sacerdos religiosus et parochus celebrare valeat missam sine ministro. Curet tamen idem orator habere aliquem puerum vel famulum quem instruat saltem pro responsis celebranti, aut saltem aliquem virum aut mulierem qui intersit sacrosancto missae sacrificio et populum repraesentet." It is clear that this induit to celebrate without a server does not mean celebrating alone; Vcrmccrsch states that all similar rescripts contain this clause,[1] and we think that n. 7 of the faculties must be interpreted, as stated in canon 20, "a stylo et praxi Curiae Romanae".

There is no reason, indeed, why persons should not obtain induits pcr-

[1] *Tbeol. Moralis,* III, §3 2.3.

mitting them to celebrate entirely alone, outside the cases of urgent necessity which the commentators have always permitted. But this is rather unusual, whereas faculties for celebrating without a server are common and are included in the customary formula issued by *Propaganda* for missionary countries. An example of the wider faculty is cited in *The Clergy Review,* II, 1951, p. 286. If the Holy See desired to concede this ampler kind of faculty to army chaplains, it seems to us that the wording of the text would have been so framed instead of the more restricted wording of n. 7, "absque ministro inserviente".

109.—One Server for Two Masses

Assuming that no additional server is obtainable, and that two Masses are celebrated at neighbouring altars, may one server respond for both? Or is it preferable for one celebrant to answer the responses himself and generally act as be is instructed to do when no server is present?

By a judicious timing it is quite possible for one server to answer the responses for several Masses, and when there is no necessity for so acting the practice must clearly be regarded as unlawful. If, however, the situation is due to a real necessity, one has then to make a choice of the lesser of two evils. It is preferable, in our view, for the server of a neighbouring celebrant to do what is possible for the assistance of a second celebrant, rather than leave the latter to answer and serve himself. This is the solution given by *Ami dn Clergé,* 1912, p. 1072, the only reference we can find to the case. It appears to be correct, for if, as all are agreed, the celebrant may fulfil the office of two persons by acting as server whilst celebrating, there is nothing startlingly absurd in a server also taking a double office by acting as server to a second Mass whilst serving a first. But it is not easy to imagine circumstances justifying this practice, since it will usually be possible for the two priests to say Mass successively instead of simultaneously.

110.—Mass Server: Vesture

If the Mass server is not a cleric, is he required to vest in cassock and sterp/ice? Is it correct for altar servers to wear white gloves, or for the laity to receive the sacraments with gloved hands?

Rit. Celebr. Miss., II, 1: ministro praecedente . . . superpelliceum induto.

S.R.C., 25 November, 1906, 4194.2: An omnes qui vestem talarem induunt, sint vel non tonsurati, debeant, iuxta Rubricas Missalis . . . superpelliceum induere, dum Missae privatae inserviunt? *Resp.* Affirmative, nisi pro laicis alicuius Familiae Religiosae obstent specialia statuta approbata.

8 June, 191T, n. 4271.1: Utrum laico Missae inservienti ministrari possit Sacra Communio intra Presbyterium et in ora suppedanei Altaris, etiamsi non sit indutus habitu clericali? *Resp.* Affirmative.

It is clear from these texts that the Mass server is not permitted to be vested in cassock alone; but it is not clear whether the lay server is strictly bound to wear a cassock, since n. 4271.1 assumes that he is not so vested. From the historical point of view, the necessity of having a cleric to serve Mass appears to have been stressed from the IXth to the XHIth centuries; the requirement is indicated in *De Defectibus,* X, 1. A recent writer has shown that it was not the discipline anterior to the IXth century.* It could be maintained, indeed, since he makes the responses for the body of the faithful, that a lay server is more fittingly attired as a lay person.

In the present state of the law, accordingly, no rule is violated in serving a private low Mass in lay attire: local custom should be followed, but we believe it is more usual in the parish churches of this country for the lay server to vestas a cleric when serving at Mass. Thus O'Connell, *Celebration of Mass,* II, p. 199: "When at all possible, the servers should wear a cassock and surplice—even if he be not a cleric—but if this be not possible, he may serve Mass in his ordinary dress."

Amongst the sacred ministers and other assisting on the sanctuary, the only one entitled to wear gloves, as an ornament or vestment, is the bishop on the occasions when their use is directed by the rubrics. It is certainly incorrect for altar servers to wear gloves, girdles, capes, skull-caps or any other ornament beyond cassock and surplice; they take the place of clerics and are vested accordingly.

As regards the laity, it is incorrect to approach the sacraments with gloved hands, not precisely because gloves are an ornament or vestment, but because social etiquette regards the ungloved hand as a mark of respect in the presence of a superior. The rule should, therefore, be observed, not only when receiving the sacraments, but on every occasion when the laity take part in some divine service.

111.—The Server's Confiteor

Is it permittedfor a tertiary serving Mass to insert in the "Confiteor" St. Dominic, St. Francis, St. Benedict, etc., thus using aformula differentfrom thatwhich the priest bas used?

The rule is that, without a special indult, no extra names may be added to the *Confiteor* at Mass.2 The induits, however, arc many.3 Moreover, the rubrics of the Missals used by certain religious Orders, which have been approved by the Holy See, direct that the appropriate Saint's name should be added to those in the *Confiteor* of the Roman Missal.4 As explained in the official commentary of the *Decreta Authentica* the addition is to be made by all who use the Breviary of a given Order.

No difficulty arises if a server, whether a tertiary or not, is serving the Mass of a priest whose rule permits the insertion of a name. But we can find no clear ruling anywhere concerning the correct practice, in the case of a tertiary serving the Mass of a priest who enjoys no permission to depart

* *Periodica,* 1959, p. 370.
15.R.G, nn. 1532 and 2142.
» Cf. nn. 2297, 2387, 2972, 2983
* N. 2587.2.

from the usual formula of the Roman Missal. On the axiom *accessorium sequitur principale,* it seems to us that the server should recite the *Confiteor* exactly as it is in the rite of the priest whom he is serving. This interpretation is confirmed in the text of the Prayer Book for Dominican Sisters, Collegio Angelico, Rome, 1925. At the end of the book is given the manner of serving a Dominican's Mass and the manner *of* serving a priest who is not using the Dominican rite; the latter contains no variation in the *Confiteor.* But as it is a question of indult, it might well be that certain tertiaries are permitted to depart from the rule.

112.—Standing During Credo

The server at Low Mass, if well-instructed, kneels during the "Credo", but the people commonly stand. Is there any reason for this anomaly, or are there any definite rides on the subject?

(i) During a solemn Mass or a *Missa Cantata* the people act correctly if they follow the choir on the sanctuary, in sitting, kneeling and standing; e.g. during the *Credo* they stand whilst the celebrant recites it, and are seated when he and the choir are seated. But it is usually conceded that these rubrics which are preceptive for the choir are merely directive for the people. Nevertheless, it makes for order and stresses the unity of the people with the ministers at the altar, in assisting at the sacrifice, if these directive rubrics are observed at sung Masses. So far as our observation goes, they are observed in this country, and a foreign ecclesiastic who is a liturgist of repute records his satisfaction at what he saw here: "Considérez ces belles assemblées des Catholiques anglais assistant à la Messe à la Cathédrale de Westminster. Quelle vivante 'leçon de ¢hoses quelle puissante affirmation de solidarité, de foi et de pieté." So writes Canon Croegaert of Malines in an article on the correct ritual action of the faithful, the substance of an address given in 1953 at the Louvain *Semaine Liturgique.*[1]

(ii) During low Mass the only rubrical direction on the subject is in *Rubricae Generales,* XVII, 2: "Circumstantes autem in Missis Privatis semper genua flectunt, etiam Tempore Paschali, praeterquam dum legitur Evangelium." Relying on this rubric, the server at low Mass is generally taught to kneel during the *Credo,* and there is not the slightest doubt that this is correct. But there is a custom in many places in this country for the server to stand, and many think it is a justifiable custom. Thus Dr. Calnan writes that it is the custom for the server to stand in England and it is not exactly wrong.[2] Others say the practice of standing is "corrupt", a strong word to use for a fairly innocent action.[3] **Assuming that the rubric quoted is preceptive and not merely directive, we** arc of the opinion that kneeling is correct.

The application of this argument to the people in the church is not so easy. The rubric is directive in their regard, and to observe it strictly would mean that they should be kneeling all the time except during the Gospel.

[1] *Participation Active des l'idtles au Culte,* p. 129.
[1] *Correct Mass-serving Afade Easy,* Widdowson (1956), p. 14.
• Cf. Fr. Page, *Practical Guide for Servers,* Bums Oates (1954), p, x8.

No provision is made for being seated, but there is a universal custom of being seated from the Offertory to the Preface, and it would require a very brave and hopeful person to remove it. There is likewise a custom of standing during the Creed, and it seems proper to preserve this practice, not because of any express obligation from the rubrics, but for the sake of uniformity. In many places it is customary also for the people to rise whilst the celebrant is going to and from the altar. Canon Croegaert is in favour of the people standing both during the Creed and during the entry and exit of the celebrant. In addition, he suggests that they should stand during the Preface, but it would be unwise, in our view, to introduce any practice which is not usual in England.

113.—The Laity's Offertory

One hears occasionally of the following practice: after reciting the Offertory the celebrant receives hosts from the faithful intending to communicate·, they are taken from a box held by the celebrant and placed on the paten. Is the rite permissible?

This was, of course, the custom in earlier ages, and all the details of its observance may be studied in a ninth-century *Ordo Romanns* and in other liturgical sources. It is reflected in many of the Secret prayers in our present Missal, e.g. Fifth Sunday after Pentecost: "Propitiare, Domine, supplicationibus nostris: et has oblationes famulorum famularumque tuarum benignus assume; ut quod singuli obtulerunt ad honorem nominis tui, cunctis proficiat ad salutem." The actual offering of gifts continues universally at the Mass of Ordination, and in certain localities at Requiem Masses *praesente cadavere.* It is not, therefore, in dispute that the custom has its roots deeply embedded in the liturgy, and it cannot be doubted that an active participation of the faithful in the Mass will be encouraged by a rite such as that described above. But the question we have to answer is whether it is in accordance with the rubrics of the Missal and our modern liturgical rules.

(i) Many evidently think that it is permissible, though the reasons alleged in its favour are not very strong. The most favourable direction of the Holy See is S.R.C., 30 December, 1881, n. 3535.1, amplified and explained 15 June, 1883, n. 3579.1, which accepted and authorized the custom existing in the diocese of Urgel, whilst modifying the manner in which the oblations (unspecified) were received by the celebrant: he is forbidden to say *Oblatio tna accepta sit a Deo,* and the veneration of a relic of the True Cross at this time is also forbidden; but the faithful may kiss either the hand of the celebrant or the fringe of his stole or maniple. It is evident that in determining for this locality the mode of offering to be observed, which is henceforth to be based on *Caeremoniale Episcoporum,* I, xviii, 16, the Holy See is taking it for granted that the substance of the rite is lawful. Nothing is specified, cither in the question or the reply, as to the nature of these oblations.

Relying on this text, a writer in *Questions Liturgiques et Paroissiales,* 15,36, p. 281, answered affirmatively to a query from an American priest whether the custom of receiving a host in this way, from each of twelve religious, was lawful. A ruling had been sought from the local Ordinary; but, on this

occasion, the answer given, though prudent, was not helpful: "Hacc omnia tolerari possunt, si leges ecclesiasticae non obstant." Those who are familiar with the liturgical movement will have noticed that the practice is often encouraged.1

(ii) Our own view is that the re-introduction of this ancient rite is, in principle, against the rubrics, unless it can be shown that a contrary' custom exists in certain localities. Not only is there no rubrical direction authorizing it to be done, except on special occasions such as the Mass of Ordination when candles are offered by the newly ordained, but the present rubrics expressly direct in R/7. *Celebr. Miss.,* II, 3, that the hosts for the communion of the faithful are to be prepared and placed upon the corporal (or in solemn Masses on the credence) before the beginning of Mass. The new rite, moreover, constitutes technically an "interruption" in the movement of the Mass, an interruption which is always unlawful in principle unless it can be justified cither by some liturgical requirement, as the nuptial blessing, or by some other kind of necessity such as St. Alphonsus discusses in *Theol. Moralis,* VI, n. 352. It is for those who desire to introduce this practice to show that some necessity justifies the interruption. *S.R.C., nn.* 3535.1 and 3579.1, are decrees for places where the custom is already in possession, as it certainly is in many parts of the Continent at the funeral Mass. The custom is itself a justification for the practice, but one is not permitted to transplant such rites from the locality which enjoys them, no matter how pleasing and picturesque they may be. So far as we are aware, the custom does not exist in this country'-, and a desire to promote the active participation of the faithful at Mass cannot, in our view, be regarded as an adequate reason either for interrupting the Mass or for disregarding the plain direction of the rubrics. The participation of the faithful is abundantly expressed in many *Secret* prayers, in the *Orate Fratres,* in the offering at the collection on Sundays, and in membership of altar societies which exist for providing the material for the sacrifice.

114.—Pray the Mass

Can the exact reference be given to the words ascribed to Pitts X: *"You must not pray at Mass·, you must pray the Mass"? It is sometimes quoted in the form : "You must not pray at Mass; you must say Mass," which appears to be capable of serious misunderstanding if applied to the laity.*

Pray the Mass is a good motto, short and pregnant with meaning, and is very widely used bv those who have at heart the liturgical revival, particularly in the form of the Dialogue Mass, in which the people join with the server in answering the responses at Mass.

It must be confessed that, as far as one can discover, the exact origin of these words is difficult to trace. And if we take the words "say Mass'' as the equivalent of "celebrate Mass", it is unlikely that ti c Pope would have used a phrase of this sort which would be likely to confuse the minds of the people. A suggestion by a writer in *The Acolyte,* 14 October, 1955, that

1 La *Participation Active des Fidèles auCtdte.* Semaine Liturgique, Louvain, 195 3· P· 2·|0·

". . . the Pope's advice to 'sing the Mass' has been converted into 'say Mass' appears to be quite a good explanation of the phrase."

As regards the phrase "Do not sing at Mass; sing the Mass" the words were used by Pius X, on the testimony of Fr. J. Kramp, S.J., during a Conference on Church music.[1] But there is hardly any need to establish the authenticity of the words. Even though the Pope did not actually use them in the circumstances mentioned, they do express not only the earnest wish of Pius X, but of subsequent Popes, that the laity should join in singing the liturgical responses. "Active participation in the Holy Mysteries and in the public and solemn prayer of the Church is the primary and indispensable source of a true Christian spirit."[2] "To spread among the faithful an exact knowledge of the liturgy ... a delight in the prayers, rites and chants . . . an active part in the Holy Mysteries . . . would nourish their piety, strengthen their faith, and teach them to lead lives of perfection."[3] "The faithful, not as outsiders or mute spectators, but as understanding the liturgy and penetrated by its beauty, should assist at sacred functions and join in the choral responses."[4]

It is an easy transition from "sing the Mass" to "pray the Mass", and the words express the part of the laity in the sacrifice without any of the misunderstanding that might accompany the words "say Mass". According to the writer in *Orate Fratres* already quoted, the words were used by Pius X in an interview with Camille Bellaigue, a French journalist, but no authority even for this unsatisfactory authentication is given. But the words have since been attributed to Pius X in official ecclesiastical documents, *Roma face»*..

115.—The People Answering: Dialogue Mass

What is the official guidance of the Church concerning the practice of all the faithful present at Mass reciting certain parts aloud with the server or with the celebrant?

Kit. Celebr. Miss., III, 9 and 10: Cum minister et qui intersunt (etiamsi ibi fuerit Summus Pontifex) respondent *Confiteor.* . . . Facta a circumstantibus Confessione . . .

IV, 2: Si minister vel qui intersunt celebranti non respondent, ipse solus novies dicit.

VII, 7: Et responso a ministro vel a circumstantibus *Suscipiat* . . .

Ordo Missae: Minister seu circumstantes respondent: alioquin ipsemet sacerdos *Suscipiat* . . .

Rituale Romanum, Tit. iv, cap. iv, nn. 17 and 19: Postea facta de more confessione generali, sive ab infirmo, sive cius nomine ab alio. . . .

In the dialogue preceding the Preface and in other portions of the Mass it was the ancient custom for the people to respond, as the above rubrics from our current Missal direct. The custom ceased, not because it was prohibited, but through circumstances which made the practice difficult to observe, such as the size of the churches and their congregations,

[1] *Orate Fratrts,* June, p. 580, quoting *Slimmer der Zeif,* 1927, p. ,jj.
[*] Pius X, *Motu Proprio,* 22 November, 1905.
[1] *Benedict* AV, Julv 1915, quoted by Lefèbvre, *Catholic Lthergy,* p. 272
[♦] Pius XI, *Dirini Cultus,* 20 December, 1928.

simultaneous celebrations by other priests, and *ùït^inconvtnientia et perturbationes* of which the following decrees speak.

(1) 5.R.C., 25 February, 1921; *Periodica,* 1956, p. 59:

(t) An liceat fidelibus qui Missae intersunt se adjungere ministro, elata voce respondendo sacerdoti celebranti quoties minister respondere debet ?

(2) Si affirmative ad 1, an liceat populo una cum celebrante elata voce recitare *Gloria, Credo, Sanctus, Agnus Dei ?*

(3) Licetne fidelibus ante communionem, tum in Missa tum extra Missam, recitare seu canere *Confiteor* et sacerdoti respondere una vel loco ministri ?

Communicetur votum: Quae per se licent, non saepe expediunt ob inconvenientia quae facile oriuntur, ut in casu nn. 1-2-3, ct servetur praxis communis.

(ii) *S.R..C.,* 27 April, 1921 ; *ibid.,* p. 58: Datur Rescriptum in Mantuana die 18 febr., 1921, super dubio: An liceat inducere vel tolerare morem aliquibus in locis incipientem, quo fideles vel religiosae conjunctim respondeant sacerdoti Missam celebranti, et cum illo etiam recitent elata voce *Gloria, Credo,* etc. ? *Pesp.* Ad Rmum Ordinarium, ct ad mentem. Mens est: Quae per se licent, non semper expediunt ob aliquod inconveniens, uti v. gr. si uni vel pluribus sacerdotibus celebrantibus confusionem et distractionem ejusmodi mos afferat, ut in casu, juxta alias similes responsiones ad similes petitiones. Praeterea, praedictus mos differt a praxi communi ct vigenti.

(iii) d'.R.C., 4 August, 1922, η. 4375 :

(1) An liceat coetui fidelium adstanti sacrificio Missae, simul et conjunctim respondere, loco ministri, sacerdoti celebranti ?

(2) An probandus sit usus, quo fideles Sacro adstantes, elata voce legant Secreta, Canonem, atque ipsa Verba Consecrationis, quae paucissimis in Canone verbis exceptis, juxta Rubricas *secreto* dici debent ab ipso sacerdote ?

Et Sacra Rituum Congregatio, audito specialis Commissionis voto, omnibus mature perpensis, ita respondendum censuit:

Ad i. Ad Rmum Ordinarium juxta mentem. Mens autem est: Quae per se licent, non semper expediunt ob inconvenientia quae facile oriuntur, sicut in casu, praesertim ob perturbationes quae sacerdotes celebrantes ct fideles adstantes experiri possunt cum detrimento sacrae actionis et rubricarum. Quapropter expedit, ut servetur praxis communis, uti in simili casu pluries responsum est.

Ad 2. *Negative;* neque permitti potest fidelibus adstantibus quod a Rubricis vetitum est sacerdotibus celebrantibus, qui Canonis verba *secreto* dicunt, ut sacris Mysteriis maior reverentia concilietur, ct in ipsa Mysteria fidelium veneratio, modestia et devotio augeantur; idcoque mos enuntiatus, tamquam abusus, reprobandus est, ct, sicubi introductus sit, omnino amoveatur.

The instruction n. 4375 gave rise to much discussion, particularly in Belgium and parts of Italy which have become centres of a liturgical revival, and some authors of repute have decided that "expedit ut servetur praxis communis" is an indication that the Church looks with unqualified disfavour on the custom. But a more careful examination of the whole question will reveal that this is not a correct conclusion to draw from the words of the reply.

Some have interpreted the instruction rather neatly by seizing on the

words "loco ministri". What is forbidden, they say, is for the congregation to answer *instead of,* or *in place of* the server. But what happens in the *Missa Dialogata,* as commonly practised, is for the people to answer *together with* the server, and there is no question of breaking the very grave liturgical rule of canon 813, §1, requiring a priest to have a server when celebrating Mass. This is the explanation given in *The Month*[1] by Father Martindale, and it is found in many other commentaries on the decree.[2]

The J.R.C., if it wished to do so, might have forbidden the practice altogether and in all circumstances; but, instead, the judgement in individual cases is left to the Ordinary. The phrase "Ad Rntum Ordinarium" bears this sense in replies from the T.R.C., as may be seen in other instructions, e.g. 30 June, 1932, n. 4371. To introduce the practice everywhere, and at all Masses, would cause endless confusion and annoyance; but the *Missa Dialogata* could be started, with no inconvenience and very many advantages, in small parishes, communities and chapels, provided the consent of the Ordinary is obtained. In some dioceses, as in Bruges and Malines, there exists synodal authority for the practice.

(iv) The only later Roman reply of which we have any knowledge is that given in Italian, 30 November, 1955, to the Archbishop of Genoa, printed in *Periodica,* 1936, p. 43, and *Ephemerides Liturgicae,* 1936, p. 95. It is on the same lines as that given in 1922, but is more favourable to the practice, which is now described as "praiseworthy" in itself—per sè lodevole—and not merely "lawful". We give the Latin version of the text:

(1) In Seminariis, in Congregationibus, in aliquibus paroeciis inolevit usus quo populus una cum ministro respondet in Missis privatis, modo nihil confusionis afferat. Quaeritur utrum hic usus sustineri possit, imo propagari.

(2) In nonnullis locis, in Missis privatis, populus una cum sacerdote celebrante, alta voce et concorde, recitat *Gloria, Credo, Sanctas, Benedictas* et *Agnus Dei.* Propagatores huius usus hanc rationem reddunt: Missa privata est abbreviatio Missae decantatae. Atqui in missa decantata populus decantat *Gloria, Credo, Sanctus, Benedictus* et *Agnus Dei.* Ergo hoc fieri potest per recitationem etiam in missis privatis.

Quaeritur utrum sustineri possit et usus et ratio adducta.

Haec sacra Congregatio, audita quoque sententia Commissionis liturgicae, respondet ad normam decreti n. 4375 pertinere ad Ordinarium iudicarc num in singulis casibus, spectatis omnibus rerum adiunctis, videlicet loco, populo, numero missarum quae simul celebrantur, etc., usus propositus, etsi per se laudabilis, inferat turbationem potius quam foveat devotionem. Quod facilius accidere potest in usu in altero dubio proposito, etiam praetermisso iudicio de ratione quae affertur, videlicet: *Missa privata est abbreviatio Missae decantatae.*

Secundum praedictam normam Eminentia Vestra Reverendissima pro prudentia sua plenum ius habet temperandi hanc pietatis liturgicae formam.

The decision, therefore, regarding this practice and all its details rests with the Ordinary', who will no doubt take into consideration the desires of the local priest. *Questions Liturgiques et Paroissiales,* 1938, p. 168, prints from *La Croix,* 13 March, 1938, a useful clarification of the subject by the Master

1CLXT, 1933, p. 145.

» Cf. *Collationes Brngenses,* 1922, p. 436; 1952, p. 226; *Palaestra del Clero,* 1933, p. 199.

of Ceremonies to the Cardinal Archbishop of Paris. It is not a law of the Archbishop for his diocese, but it may be taken as a good interpretation of the law, since the text was approved by the diocesan liturgical commission. After stating that the *Missa Dialogata* is praiseworthy but is not permitted except with the Ordinary's approval in each case, the writer cites various Instructions of the Holy See in order to eliminate what is forbidden:

Recitation of the *Gloria,* etc., by saying aloud with the celebrant *alternate* verses or stanzas. (J.R.C., n. 3248.5.)

The recital aloud with the celebrant of those parts of the Mass which must be said by him *secreto.* *(S.R.C., n.* 4375.)

The invocation aloud at the elevation of the words "My Lord and My God". (J.R.C., n. 4397.1).

Reciting those prayers which are reserved to the celebrant, such as *Orate Fratres, Domine non sum dignus·,* but the people may be authorized to say aloud the *Domine non sum dignus,* etc., which precedes the communion of the faithful.

The *epistle* and *gospel* may be read aloud in the vernacular by a male religious catechist or teacher, whilst the celebrant recites them in Latin. Rites not prescribed by the rubrics, c.g. each of the faithful bringing a host at the offertory, or introducing into a low Mass ceremonies proper to a solemn Mass, arc always forbidden. For it is not the purpose of the *Missa Dialogata,* he continues, to solemnize a low Mass, but to prepare the way for the full participation of the faithful in a sung Mass.

IV. HOLY EUCHARIST: COMMUNION

RITES OF HOLY COMMUNION

116.—Dividing the Sacred Host

//, owing to an unfortunate error, there are insufficient small particles in the ciborium, is it lawful to divide not only these latter but also the large Host reservedfor Benediction and the large Host consecrated in the Mass ?

The rule is contained in a decree *S.C. Cone.,* i 2 Feb., 1679, which forbade various abuses in the administration of Holy Communion: "Insuper admoneant, nulli tradendas plures Eucharistiae formas seu particulas, neque grandiores, sed consuetas." The text of this decree in *Fontes,* n. 2848, contains a footnote quoting Benedict XIV, who explains the reason of the prohibition: an abuse existed in some French convents where the nuns received several particles "maioris devotionis gratia". A more explicit direction may be seen in Gardellini's Commentary on the *Clementine instruction* for the "Forty Hours" Exposition, xxxi, n. 24: "Per hoc docemur cam neque integram, neque in partes sectam fidelibus posse distribui."

That the rule admits of exceptions is expressly allowed by S.R.C., 16 March, 1835, n. 2704.1: "Num tuto sequi valeat Regula Ritualis Parisicnsis, sic expressa: Si, quando Communio danda est, inventus non fuerit sufficiens numerus Hostiarum, poterunt aliquot Hostiae dividi in plures Particulas, quae singulis distribuantur ? Et quatenus non sit sequenda, num quibusdam saltem in circumstantiis temporis, locorum et personarum, sequi possit ? Rfj·/». Servetur consuetudo dividendi consecratas particulas, si adsit necessitas."

It is clearly wrong to adopt the practice of dividing Hosts without necessity and, although some of the older writers give as an example the necessity of administering Viaticum, there is now complete agreement that far less than this extreme need suffices. "In casu necessitatis, si nempe particulae conccratac non habeamur pro numero fidelium communicantium, particula dividi potest in duas, ties, aut etiam quatuor partes juxta eiusdem particulae magnitudinem, sed cavendum ne particula nimis parva c\radat et vix sensibilis in ore communicantis."[1] The fact that a number of people present themselves for Holy Communion is, therefore, a sufficient reason for dividing the particles in the ciborium.

May the same be said for breaking off a portion of the priest's Host ? Gasparri answers in the affirmative: "Quod si particulae consecratae desint, etiam ex maiori hostia sacerdoti reservata detrahi potest una aliavc pars distribuenda fidelibus qui diu cxpectarc non possent." Cappello, citing this text, adds "licet ex mera devotione communicet".[2] *A fortiori,*

[1] Gasparri, D/ *Ejabaristia,* II, §1098.
[2] *De \<uramentis.* I, §451. ad 4.

in our opinion, this may be done with the large l lost reserved for Benediction, though the writers consulted do not advert to this point.

117.—Priest Communicating Himself

May a sick priest, unable to say Mass, but able to rise in the morningfasting, give himself Holy Communion ? He is living in an institution where the Blessed Sacrament i: reserved and where the chaplain, being himself an invalid, is unable to say Mass except on Sunday ? If it is permitted, what prayers should be said ?

The common law is that a priest may not give Holy Communion to himself except during the celebration of Mass. The law admits of an exception if a priest is unable to say Mass, and if there is no other priest who can give him Holy Communion *more laicorum.* The justification of this exception rests on the universal teaching of all the authorities on the subject, so universal that Cappello states: "Quod autem devotionis causa liceat sacerdoti seipsum communicare, ut probabile habent plures veteres theologi, ct omnes recentiores (ne unum quidem invenimus, qui id neget)."[1] They all rightly require that there should be no scandal thereby to the faithful; the faithful rightly informed should not be scandalized and, in any case, the priest in question could easily secure that no other person is present in the church. The only difficult point is, perhaps, in forming a correct judgement that another priest cannot be had. In every analogous example moral impossibility suffices and, in our opinion, it suffices in this instance. In the case submitted the action is justified if the chaplain cannot be present *sine gravi incommodo,* and a decision must clearly be left to the conscience of both priests.

We can find no indication, amongst the writers who discuss this point, as to the prayers which should be said. Failing something more authoritative, it would appear that the obvious thing is to use the ordinary' *formula* for communicating persons outside of Mass. Imitating the rubrics of the Breviary, the *Confiteor, Misereatur* and *Indulgentiam* should be recited exactly as a priest recites them when saying Office alone. *Ecce Agnus Dei, Domine non sum dignus,* etc., and *Corpus Domini,* etc., follows. After Communion the antiphon *O Sacrum Convivium,* with its versicle and prayer, should be said, and the blessing omitted, unless there are other people present.

118.—Deacon Administering Holy Communion

It sometimes happens that a deacon is staying in the parish, and it would often be convenient if he could administer I loly Communion to the faithful. What is a sufficient reason for permitting this ? What rite is to be observed and, in particular, should he give the blessing at the end? May he also communicate himself?

(i) Canon 845, §2: (Minister) extraordinarius est diaconus, de Ordinarii loci vel parochi licentia, gravi de causa concedenda, quae in casu necessitatis legitime praesumitur.

l *De Sacramentis.* I, §B7·

The canon expresses the ancient discipline of the Church implied in the Ordination rite: "Et quia comministri et cooperatores estis Corporis et Sanguinis Domini, estote ab omni illecebra carnis alieni. . . ." Permission is to be sought from the parish priest, who will use his judgement in deciding that a grave cause exists, but this permission may be presumed in cases of necessity. The administration of Viaticum is an obvious case of necessity in which he not only may, but should administer the Holy Eucharist without seeking permission.

Previous to the Code, the writers on the subject generally relied on the decree T.R.C., 25 February, n. 2504, which authorized a deacon to distribute Holy Communion only *in casu necessitatis,* whereas now, from canon 845, §2, there is a distinction between "necessity" and "grave reason". No doubt it could be decided that there may be other cases of necessity, apart from the administration of Viaticum, but we have not found any author who explicitly teaches that a deacon may administer Holy Communion, without permission, in other cases. The fulfilment of the paschal precept would seem to be one other example. A parish priest lawfully gives permission in cases which are much less than grave necessity, for example, if a priest needs assistance in communicating a large congregation, or if he is absent at a time when Holy Communion has been announced, or if the faithful would otherwise be deprived of Holy Communion.

(ii) When the latest typical edition of the *Rituale Romanian* appeared, it was directed that a deacon administering Holy Communion should observe the rite as set out in the Ritual.[1] Even before this edition it was agreed that, in administering Holy Communion to the sick, he should give a blessing with the ciborium to the sick person and also to the faithful after returning to the church. But.thcre was considerable doubt as to whether he should give the usual blessing with the hand when administering Holy Communion in a church outside or Mass. This question is really solved by cap. ii, n. 10, of the *Rituale Romanum,* and a reply of the *Code Commission"*[2] has removed all remaining doubt by answering in the affirmative: "potest ct debet".

(iii) He may also communicate himself, a corollary from the solution given in Q. 117.

119.—Handling the Corporal

Is a lay-brother sacristan allowed to spread andfor fold the corporal when, for example, the Blessed Sacrament is being moved from one altar to another for the purpose of communicating the faithful?

Canon 1506, §1: Curandum ne corporalia, quae adhibita fuere in sacrificio Missae, tangantur, nisi a clericis vel ab iis qui eorum custodiam habent.

5.R.C., 24 September, 1842, n. 2850.3: An sacerdos pergens ad exhibendam Communionem extra Missam debeat per se vel per Ministrum deferre bursam in qua corporale recluditur. *Resp.* Decere ut a sacerdote deferatur.

By arranging and folding the corporal upon the altar the sacristan is not breaking the rule which forbids unauthorized persons to touch this sacred

1 Tit. iv, cap. ii, n. 10; cap. iv, n. 28.
» 15 July, 19jo.

linen; the action of handling it is covered by canon 1306, §1, which has in mind its custody in the sacristy. But, as regards handling the corporal in the course of some sacred function at the altar, one has to consider the appropriate rubrics, or to adapt them from other rites, whenever, as in the above case, no specific directions exist. The procedure at the place *a quo* is covered by the directions for removing the Blessed Sacrament from the tabernacle when administering Holy Communion, *Rituale Romanum,* Tit. iv, cap. ii, the first rubric of which indicates that the priest himself prepares the corporal; and from n. 2850.3, it is more fitting that he should himself carry the burse to the altar. The procedure at the place *ad quern* is covered by cap. iv "De Communione Infirmorum", which supposes in n. 13 that the burse and corporal will be carried by a server, and reads in n. 15: "Turn depositum Sacramentum super mensa, supposito corporali, genuflexus adorat. . . ." We think it is more correct for the priest himself to unfold the corporal at this altar, either beforehand, or on arriving with the Blessed Sacrament; similarly he should refold the corporal at the place *a quo,* instead of leaving this to be done by the sacristan. Cf. O'Kane-Fallon, *Rubrics oj the Roman Ritual,* §781. For any reasonable cause, for example, if the priest forgets to refold the corporal at either place, it may be folded by any of the persons mentioned in canon 1306, §1.

120.—Communion During Exposition

Is one expressly forbidden to distribute Holy Communion to the faithful at an altar upon which the Blessed Sacrament is exposed? If so, what is to be done during the "Forty Hours" Exposition in a church which has only one altar?

(i) The common law prohibits the practice as the J\R.C. has frequently determined. The most recent occasion was 27 July, 1927: "Hac nacta occasione ipsa Sacra Rituum Congregatio decreta η. 3448» *Societatis lens,* ii Martii, 1878, et η. 4553, Marianopolitana, 17 Aprilis, 1919, circa Missam et sacram Communionem in Altari expositionis SSihi Sacramenti, adhuc in suo robore manere declarat; eorumque observantia a Rcvmis locorum Ordinariis peculiari studio curanda est."[1] The prohibition was repeated in 1938 by the Cardinal Vicar of Rome for all churches within the city: "Non licet sine speciali induito, distribuere sacram Communionem in altari ubi expositum est SSmum Sacramentum."[2]

(ii) Induits permitting the practice are obtained by those Religious Institutes which arc devoted to perpetual Exposition of the Blessed Sacrament, and they may be obtained by any other persons through the local Ordinary.

But the question arises whether, in cases of absolute necessity, as in the circumstances of this question, one is bound to obtain an induit. We think it is not necessary—*ad impossibile nemo tenetur*—for no positive law is binding if its observance is impossible. 5.R.C., n. 3448, is concerned with forbidding the practice in churches having no other altars which could be used, and both this decree and n. 4353 prohibit the custom "sine necessitate.

[1] *A.A.S.,* XIX, 1927» P· 289·
[2] *Ephemerides Laturgicae, lus et Praxis,* 1938, p. 53.

vel gravi causa, vel speciali induito". The decree of 1927 and that of the Cardinal Vicar in 1938 do not mention necessity or grave cause, but they quote the previous decrees, and we think it is quite certain that in cases of real necessity it is not obligatory to obtain an induit. The law must be observed as far as possible, and it is suggested by a writer in *Periodical* that if there is only one altar, and no induit has been obtained, the Blessed Sacrament should be covered with a veil during the distribution of Holy Communion, as is customary when a sermon is being preached during Exposition.

121.—Communion During Another Mass

Is a priest permitted to interrupt a celebrant during any part of tbe Mass in order to give Holy Communion to the people?

It is clear that the celebration of Mass and the distribution of Holy Communion, as a separate rite at the same altar, cannot normally be permitted. It would mean superimposing one rite on another, and two sets of prayers being said by different priests at the same time.

The only question is whether necessity may ever be considered to excuse what is a patent violation of all liturgical principle and order. Dr. Maffei, writing in *Questions Liturgiques et Paroissiales,* 1925, p. 121, quotes Van der Stappcn as permitting the practice, if there is only one altar in the church and in a case of necessity. We can conceive a case of necessity arising in a small church, with only one altar, on a day like Holy Thursday, when the faithful may wish to communicate and are unable to wait till the celebrant of the Mass distributes Holy Communion. Even in a case of this kind, the second priest must avoid interrupting the course of the Mass, e.g. he may not approach the tabernacle during the Canon. He should say the prayers in a low voice and observe all the appropriate rubrics, such as giving the blessing at the end.

122.—Times for Holy Communion

Is the celebrant at a side altar entitled to refuse his server's request for Holy Communion at that Mass, on the plea that it is more correct for him to communicate with the rest of tbe faithful at the high altar, where the Blessed Sacrament is reserved, even though this entails leaving the priest for a few moments without a server? Is Holy Communion rightly refused to the faithful daring a solemn Mass? They are told to approach either immediately before or after the Mass.

Canon 863: Excitentur fideles ut frequenter, etiam quotidie, pane Eucharistico reficiantur ad normas in decretis Apostolicae Sedis traditas; utque Missae adstantes non solum spirituali affectu, sed sacramcntali etiam sanctissimae Eucharistiae perceptione, rite dispositi, communicent.

Wc think that in both the above cases the refusal of Holy Communion to the faithful is liturgically wrong, even though the more serious rule that the sacraments may not be refused to those who seek them reasonably is

probably not violated. In addition to the above canon, reproduced from the Council of Trent, cf. canons 846 §1, 869, and *Rituale Romanum,* Tit. iv, cap. i, nn. 13 and 18; cap. ii, n. 11.

(i) In the first instance there is the added incorrectness of the server leaving the celebrant, but this is not the sole reason, nor even the chief one, why refusal is liturgically wrong. The real reason is well expressed by a recent writer on the subject in *Ephemerides Eiturgicae, Jus et Praxis,* 1938, p. 72: "Patet vero, etiam communionem fidelium intimam habere et retinere relationem ad sacrum sacrificium, quatenus ex tenore textuum in missa adhibitorum, nccnon praesertim ex interna ratione ipsius participationis in oratione et oblatione aliisque causis clare appareat, ipsos esse non tantum vere simul offerentes, indeque ius habentes etiam ad fructus ex oblatione hauriendos, sed ipsos etiam per totum decursum sacrae actionis tanquam vere participantes respici." If, therefore, the desire to communicate is intimated to the priest beforehand, he should consecrate a host for the server of the Mass.

(ii) The fact that people are not accustomed to communicate at a sung Mass is due to it being usually celebrated very late in the morning, but this is no valid reason why Holy Communion should be refused on the rare occasions when it is sought, provided that the celebrant is warned beforehand if there is no tabernacle.

Canon 869 establishes the right of the Ordinary to prohibit the distribution of Holy Communion at any Mass, for proper reasons, and we think an instance of this prohibition would be during the capitular Mass or other solemn function in a cathedral, owing to the disturbance, perhaps, which might arise. It is open to the rector of any church, who regards communion of the faithful at a sung Mass as an unseemly disturbance, to secure the Ordinary's prohibition.

It should also be noted from canon 846, and numerous instructions of the *Congregation of Rites,* that the celebrant vested for a sung Mass may not distribute Holy Communion immediately before or after; this is permitted only at low Mass.

123.—Voice in Distributing Communion

In what tone of voice should a priest distributing Holy Communion say tbe words "Corpus Domini", etc. ?

Rif. Celebr. Miss., X, 6: Sacerdos dicit *Misereatur vestri,* etc. Dicit *Ecce Agnus Dei,* etc. . . . Deinde dicit *Domine non sum dignus,* etc. . . . simul dicens *Corpus Domini,* etc.

Rituale Romanum, Tit. iv, cap. ii, nn. 2-5 : dicit *Misereatur vestri,* etc. . . . dicit clara voce *Ecce Agnus Dei,* etc. . . . Mox subdit *Domine non sum dignus,* etc. . . . dicit *Corpus Domini,* etc.

Many priests arc accustomed to say the words in a subdued voice, and it is maintained that this satisfies the rubric, since "clear" means "audible", and the subdued voice is audible to the person being addressed. This contention may be correct, but we cannot find it supported by any of the authorities.

Though not expressly mentioned in the list, *Rubricae Generales,* XVI, x,

which enumerates the parts of the Mass to be said "clara voce", we think that all the above formulae are to be said in that voice. The Roman Ritual expressly directs it for one phrase and it appears from the wording of these rubrics that the same tone of voice is to be used throughout. The commentators we have consulted agree that this is correct. Thus O'Connell, *Celebration ofMass,* II, p. 159: "whilst saying aloud the words *Corpus Domini,* etc." Croegaert, *Caeremoniale, De Celebrante,* p. 277: "Tota haec formula *Corpus Domini,* etc., clara voce dici debet".

124.—Communion Plate

Is it strictly obligatory to rise a metal communion plate in administering Holy Communion to the faithful? Should the priest purify this plate in the same way as the paten during Mass? Should it be held by the communicants or by an altar server?

S.C. Sacram., 26 March, 1929: (5) In diribenda fidelibus sacra Communione, praeter ante communicantes extensum linteum albi coloris, juxta rubricas Missalis, Ritualis, et Caeremonialis Episcoporum, patina erit adhibenda, argento aut metallo inaurato confecta, nullimode tamen artificiosa arte intus exsculpta, quae ab ipsis fidelibus subter eorum mentum erit apponenda, excepto casu, quo Sacra Eucharistia ab Episcopo ministratur, vel a Prclato Pontificalibus utente, vel in Missa Solemni, adstante sacerdote vel diacono, qui patinam subter communicantium mentum teneat.

(6) Monendo sedulo erunt fideles ne, dum suo apponunt mento patinam, et Sacerdoti dein tradunt, aut alteri fideli eam porrigunt, ita eamdem flectant aut invertant, ut, si quae adsunt, fragmenta decidant at disperdantur.

(7) Fragmenta autem quae in patina post sacram fidelium Communionem exstabunt, quoties haec intra Missam fuerit diribita, in calicem sedulissime, digiti ope, inficiantur; in pyxidem vero, si extra Missam sacra Synaxis a fidelibus recipiatur.

(i) From reading this Instruction it would certainly appear that the plate used by the faithful should be purified in the same manner as the paten used by the priest during Mass, i.e. that he should cleanse the whole plate with his finger, whether any particles are visible or not, in order to make sure that all particles of the Holy Eucharist are removed from the plate into the chalice or ciborium. This was the conclusion which many authors took for granted in commenting upon the Instruction immediately after its appearance.[1]

(ii) On maturer consideration, however, the opinion is gaining ground that the Instruction does not impose the obligation of purifying the plate exactly in the same way as the paten. It says "in calicem, digiti ope, inficiantur (fragmenta)." Not only is there no obligation imposed, but it certainly seems, taking everything into consideration, that priests arc to be dissuaded from the practice. The plate which passes through the hands of, perhaps, several hundred people, is bound to collect fragments of dust or powder from their clothing and persons, and it is irreverent to the Holy Eucharist to sweep all this into the chalice or ciborium, as well as being repugnant to the priest when consuming the ablutions. The Instruction

[1] E.g. *I'Ami du Clergé,* 1930, p. 377 i *Periodica,* 1929, p, 311.

is obeyed if the priest takes from off the plate and puts into the chalice or ciborium any fragments that appear to be particles of the Holy Eucharist; the rest may be discarded or, in cases of doubt, purified into the small vessel containing water placed on the altar.[1]

The Instruction directs the priest to take great care in protecting fragments of the Holy Eucharist from desecration. Needless to say, it is not to be taken as encouraging an excessive and meticulous scrupulosity, which may become a real phobia to the priest as well as exasperating to the faithful.

(iii) Apart from occasions when a priest or deacon holds the plate, the Instruction directs it to be held by the communicants—*ab ipsis fidelibus.* But in a reply given to the Archbishop of Liverpool, 51 August, 1931, and also to other Ordinaries, the Holy See explicitly permits the server to do what the Instruction prescribes only for a priest or deacon: "To render the use of the plate easier, this Sacred Congregation has more than once declared it to be in harmony with its wishes (menti conforme) that the plate itself be presented to the faithful and held under the chin by clerics or servers assisting the priest, provided they observe requisite care in the use of the plate, not inverting it in any way. . . ."[a]

125.—Communion Cloth

The impression seems to exist, in many places, that the communion plate ordered in 1929 *the Congregation of the Sacraments has to be used instead of the communion cloth. Would you explain the law in this respect, since, in my view, the use of a communion cloth is still obligatory?*

R/7. *Celebr. Miss.,* X, 6: Si qui sint communicandi in Missa, Sacerdos . . . calice. Interim minister ante cos extendit linteum scu velum album, etc.

TJtuale 'Romanum, Tit. iv, cap. ii, n. 1: Sacerdos sanctissimam Eucharistiam extra missam ministraturus . . . sumpserint, et ante eos linteo mundo extenso, etc.

Caerem. Tpp., II, xxix, 3: Cum vero Episcopus Sanguinem Domini sumpserit. . . . Patena: codemquc tempore vocentur duo cappellani, scu acolythi, cottis induti cum mantili albo, quod gcnuflcxi sustinent ante communicandos, hinc inde ambabus manibus, per quatuor angulos, quousque perfecta fuerit communio, etc.

The rubrics of these liturgical books clearly prescribe a communion cloth or veil, and their use emphasizes the banquet aspect of the Mass. This idea may usefully be kept before the people, since many symbolic meanings are given to liturgical rites. Actually, it appears that the communion veil, which is mentioned in the sixth century councils, was originally intended for the use of women, either as a covering for their heads when communicating, or as a covering for their hands when taking the Sacred Species from the priest. The name of the veil thus used was *dominicale,* and it continued in use, often permanently on the altar rail, after the custom of receiving communion in the hand ceased. The *linteum seu telum*

[1] Vcrmccrsch, *Periodica,* 1950, p. 44, quoting *Ephcmcridej I jUtrgicae,* 1950, p. 74.
[a] *The Clergy Ra'i>u·,* III, 1952, p. 451.

mundum became universally regarded as used in order to safeguard the Sacred Host from falling on the ground, and a stiff card covered with linen was considered by rubricians to be a proper observance of the rubric. In this country wc were accustomed to the linen card, rather resembling a large pall, until the new regulation of 1929 directed that a communion plate was to be used.

It can easily be understood that, since the card was replaced by the plate, the use of a linen cloth seemed to many unnecessary. It has been discontinued in many places, but the only possible justification for this practice would be that it is a lawful custom contrary to the rubrics. In our view this plea cannot easily be justified, for the Instruction of 26 March, 1929, expressly directs that the plate is to be used *in addition* to the linen cloth: "Ne autem fragmenta in humum decidant quoties sacerdos Christi Corpus fidelibus praebet, sive ipsa directe, sive ex distenta mappa prolabantur, prudentissime dimidio fere praeterito saeculo mos fuit inductus, parva utendi patina, ex metallo confecta, subter eorum mentum apponenda. . . . Quapropter Sacra Congregatio . . . haec praescribenda esse censuit: (5) In diribenda fidelibus sacra Communione, praeter, ante communicantes extensum, linteum albi coloris, iuxta rubricas Missalis, Ritualis, et Caercmonialis Episcoporum, patina erit adhibenda, etc."

The position, as we understand it, is that previous to this Instruction the custom of using a linen card instead of a linen cloth was permissible; since the Instruction, a cloth is of obligation in addition to the metal plate. This cloth, whatever its origin in antiquity may have been, is no longer for the purpose of preventing the Sacred Host from falling, but is of a purely ceremonial character.

126.—Purification after Communion

Is it permitted, for proportionate reasons, to restore the purification of wine and water which the rubrics of our present Missal direct to be given to all communicants?

Rit. Celebr. Miss., X, 6: Minister autem dextera manu tenens vas cum vino et aqua, sinistra vero mappulam, aliquanto post sacerdotem eis porrigit purificationem, et mappulam ad os abstergendum. Cf. also n. 9 in *Pontifical Masses.*

J'.R.C., 16 March, 1591, η. 9, and 18 June, 1689, n. 1812: Consuetudines quae sunt contra Missale Romanum, sublatae sunt per Bullam Pii V in principio ipsius Missalis impressam, et dicendae sunt potius corruptelae quam consuetudines . . . consuetudines contra Rubricas Missalis sublatae per decretum.

Canon 818: Reprobata quavis contraria consuetudine, sacerdos celebrans accurate ac devote servet rubricas suorum ritualium librorum . . .

(i) The question has to be decided by applying the principles of customary law to the rubric, and it is the more difficult, in this instance, since the custom of not giving the purification of wine and water is not one *secundum legem* or *praeter legem* but manifestly *contra legem.* Some older writers maintained that there could never be a legitimate custom *contra rubricas* unless expressly approved by the Holy See. But this view, though theoreticallv consistent with the above texts, cannot be sustained in practice, since the

distinction between preceptive and directive rubrics is now universally admitted. Moreover, it could be held that the exclusion of custom refers to *notable* modifications of the rubrics.

An article on the subject of custom as affecting liturgical law's appeared in *Ephemerides Eiturgicae,* 1917, pp. 430 and 557, and the writer, P. Victorius ab Appcltcrn, O.M. Cap., establishes a distinction which is important. His point is that the reprobation in canon 818 of all customs against the rubrics refers to the *actions of the priest celebrating Mass.* "Quum nobis Codex per canonem 818 illam reprobationem consuetudinum contra rubricas Missalis Romani et aliorum ritualium librorum solummodo limitaverit seu restrinxerit *ad Sacerdotem Missam celebrantem,* et consequenter ita ius antiquum, per Constitutiones Summorum Pontificum et decreta 5.R.C. quoad Rubricas Missalis Romani stabilitum, correxerit, idcirco concludendum est alias consuetudines, etsi Rubricis Missalis Romani contrarias, a Novo Codice tanquam iuris corruptelas non esse reprobatas, et consequenter, si sint centenariae aut immemorabiles, ab Ordinariis iuxta locorum et personarum adiuncta tolerari posse, si ipsi existiment eas *prudenter* submoveri non posse."

Whatever the explanation, the Holy See has frequently left it to local Ordinaries to decide w'hethcr a given custom is to be continued. Modern commentators hold that canon 818 docs not exclude every custom *contra rubricas,* and that canons 25 to 30, which formulate the lawr on custom, may be applied to liturgical laws.[1] The implied consent of the competent authority, required from canon 25, is certainly present with regard to the custom of not observing the purification rubric.[2] It is almost universally disregarded, except in the Ordination Mass, and it is the exception for any of the authors explaining the rite of Communion even to advert to the rubric. Alone amongst those in common use we find that De Herdt permits its use in solemn Masses "si velint et usus habeat".[3]

(ii) Other examples of rubrics which have fallen into disuse are the Sanctus Candle and the use of a cushion for the Missal.[4] The obligation of this candle no longer exists, but the rubric may be followed if so desired, and the Ordinary can direct its use. The same may be said of the Missal cushion.

We think, however, that the purification rubric is not only obsolete but that it is no longer permitted to restore it; the custom of not observing the rubric now has the force of law. Or, if this seems an unreasonable view to take of a rubric in the *editio typica* of our present Missal, it may be said that its observance w'ould cause bewilderment, if not scandal, to the faithful, since it has been obsolete for so long. In other matters of a rather similar character the 5\R.C. has directed the observance of a rubric, in spite of a contrary local custom, provided it can be done without scandal. Still more should this rule of avoiding scandal apply in the case of a rubric which has fallen into disuse nearly everywhere. We arc of the opinion, therefore, that it would be wrong to start observing this rubric without the permission of the Ordinary. These remarks apply to the re-introduction of the practice. If, as De Herdt notes, its observance still continues in certain instances and

1 Cf. Van Hove, *Commentarium Lovaniense, De Consuetudine,* §§227, 228; CaUewacrt· *Utargicae Institutiones,* ξι39.

1 Gaspard, *De Eucharistia,* §1184.

• *Sacrae Liturgiae Praxis,* I, §33I.

♦ K/7 *Celehr. Miss.,* VIII, 6; fl, *4-*

localities, the practice should be continued. It is done, we believe, in Westminster Cathedral at the solemn Mass on Maundy Thursday, when the purification is given to the clergy communicating and to the lay servers.

§2. DISPOSITIONS OF COMMUNICANT

127.—Refusing Communion Before Mass

It is the custom here for Holy Communion to be given before the first Mass on Holy Days, and many communicants leave the church between the first gospel and the elevation—thereby missing Mass. They go home for breakfast and then proceed to work. Is it not the duty of these people to rise early enough to get breakfast before Mass, omitting Iloly Communion, and then proceed to work ? Under these circumstances ought not the clerg\ to refuse Holy Communion before Mass? To me it seems a grave scandal which ought to be stopped.

The first contention is, we think, correct. The precept of hearing Mass is a grave one and should be fulfilled, if it is morally possible, in preference to receiving Holy Communion without hearing Mass. It is a matter which should be explained to the people from the pulpit occasionally.

But we cannot agree that the faithful, in this case, should be refused Holy Communion. Public refusal of the sacraments is a most rare occurrence and is lawful only in the case of public sinners. Even though we assume that the communicants arc certainly going to miss Mass, this is not the kind of conduct which puts a person into the category' of public sinners. Moreover, the priest cannot be quite certain that it is their intention to miss Mass—they may fulfil this obligation later at some other church; nor can it be said with certainty that the obligation of hearing Mass on Holy Days of obligation is binding upon working people at the cost of going without breakfast, or of deferring it to the forenoon, or of bringing it with them to church. It is a matter to be settled by the conscience of each individual in consultation, if necessary, with a confessor.

AM)· *a parish priest insist on the faithful receiving Holy Communion immediately after the priest's communion during all Masses, instead of immediately before, except only in the case of persons who hare a good reason for communicating at this less correct time ?*

The normal rule is that the faithful should communicate during Mass. This is certainly the tradition of the Church and may even be said to represent the mind of Christ: "accipite ex co omnes". The *Postcommnnion* prayer of the Mass presupposes and takes for granted that the faithful have just received Holy Conununion. Canon 863 : "Excitentur fideles ut frequenter, etiam quotidie . . . utque Missae adstantes non solum spirituali affectu, sed sacramentali etiam sanctissimae Eucharistiae perceptione, rite dispositi, communicent." Also, canon 846, §1, expresses the normal rule: "Quilibet sacerdos intra Missam et, si privatim celebrat, etiam proxime ante et statim

post, sacram communionem ministrare potest, salvo praescripto can. 869." The exception for a private Mass establishes the rule for Masses which are not private; canon 869 permits the distribution of Holy Communion in any place where Mass may lawfully be said. The practice of receiving Holy Communion just before Mass needs special consideration, because the priest is vested for Mass and the rite has the appearance of being connected with Mass. It is open to any priest to point out repeatedly to the people the importance of the normal liturgical rule.

But there have always been occasions, even in ancient practice, when the Holy Eucharist could be received outside of Mass, on the supposition that there existed some necessity for it. The practice has undoubtedly spread to cases where there is really no shadow of necessity whatever. This abuse the Church has checked by forbidding the practice of communicating before Mass, except only in Masses styled "private". Unfortunately the term *Missa Privata* can be used in more than one sense: it may mean a Mass at which the faithful are not invited to be present—for example, a Mass in a private oratory or a non-oflicial Mass said by a visiting priest in a church; it may also mean, and this is the commonest sense, a Mass which is not a sung Mass nor a conventual Mass. It is in this latter sense that the terms of canon 846, §1, are to be interpreted, as may be deduced from 5.R.C., n. 4177-3-

It must, therefore, be admitted that as long as the custom of communicating before Mass is not expressly forbidden, the faithful seeking Communion at this time are seeking it reasonably; they may not be refused, except in the circumstances of n. 4177.5: ". . . (non potest) administrare S. Communionem, etiam data rationabili causa, ante vcl post Missam solemnem aut cantatam aut etiam convcntualem, sicut permittitur ante vel post Missam privatam".

128.—Evening Communion

Is it lawful for the faithful to receive I'Io/y Communion at any time of the day, if they are fasting, and their request is reasonable?

The custom of communicating outside of Mass is unliturgical but not forbidden. The restrictions as to the time of reception are, firstly, that Holy Communion may not be administered, even with a reasonable cause, immediately before or after *Missa Solemnis, Missa Cantata,* and *Missa Conventualis.* This is permitted only before or after *Missa Privata.*

Secondly, unless there is a reasonable cause for acting differently, Holy Communion should be received only at those times at which Mass can be celebrated—that is to say, before midday. Canon 867, §4, which formulates this well-understood rule, allows for exceptional circumstances: "nisi aliud rationabilis causa suadeat". It is not a very practical provision, since it would rarely happen that a person would be keeping the fast through the afternoon or evening. But it is possible, for example, in the case of a worker on a night-shift, who has been sleeping during the morning, that the afternoon is not merely a convenient time but the only time. There is a reasonable cause, and the only precaution necessary is to avoid the scandal which might arise if it were thought that Holy Communion was being

received not fasting. "Justa existence causa communicare possunt fideles ieiuni non tantum horis matutinalibus, sed etiam post-meridianis, dummodo tamen inde non oriatur scandalum aut admiratio populi. Prohibitio non celebrandi Missam post-meridiem non ita stricte se extendit ad dispensationem communionis."[1]

129.—Communion During Sung Mass

Should those in white choir who are about to receive Holy Communion kneel or standfrom the "Ecce Agnus Dei" onwards?

(i) During the *Confiteor* only those who arc about to communicate should kneel. "Diaconus vero stans in cornu Epistolae . . . cantabit confessionem in tono et notis consuetis, stantibus Canonicis et clero, exceptis his qui sunt communicandi, qui genuflectere debent, et tunc per Caeremoniarium vocantur."[2] In these days, normally everyone in white choir will be receiving Holy Communion. Rubricists direct that these communicants shall kneel in twos in the middle of the choir,[3] but this may not always be possible if there is a large number; they will then presumably be kneeling in their places in choir.

(ii) Not only the communicants but everyone in white choir should kneel whilst Holy Communion is being distributed. Some authors, including Martinucci, direct that it is more correct to remain standing, basing this view on the rule that the white choir is standing, at a solemn Mass, during the communion of the celebrant.[4] But an instruction of S.R.C. is quite explicit: "An Canonico, post sumptionem Corporis et Sanguinis, dispensante Corpus Christi clericis . . . debeant Canonici genuflectere? Rat/». Affirmative."[5] The reason is evident: during the Communion of the celebrant the Blessed Sacrament is not visibly exposed, but during the distribution of Holy Communion it is. Those in white choir should, therefore, be kneeling from the moment the celebrant faces them with the words *Ecce Agnus Dei* until the distribution of Holy Communion is concluded. This is the solution given in *Ephemerides Eiturgicae,* 1904, pp. 674, 675, summarized by *l'Ami du Clergé,* 1930, p. 527.

130.—Mass or Communion

Owing to bis business and the hour of Mass in the church, a parishioner of mine finds that on weekdays he can either hear Mass or receive Holy Communion, but it is impossible to do both. He asks which of these is preferable, and has received contradictory answers from priests consulted.

There arc many considerations, relative to the person's circumstances, which might assist in coming to a decision. For example, he may, perhaps,

1 PrQnuncr, *Vbcol. Moralis*, III, §221.
' *Caerem. Epp^wL* xxix,
3 Cf. Fortcscuc-O'Connell, *Ctrcmomts of* /Ar Rweu Rj/e, p. 119.
4 *Rjibrirar Gtnrralts,* XVII. 5; *Catrtm. Epp.,* II, vlii, 71.
» 9 March, 1711, n. 2209.)·

assist at Mass with greater devotion or *vice versa·,* or he may have a personal preference for one rather than the other; or he may desire to gain an indulgence or do the Nine Fridays. Obviously he is at liberty to please himself.

But such considerations do not really touch the question, if we suppose that these circumstances do not affect the case, and that he is simply desirous of doing the better of two good actions. It is a quandary which could not have arisen in an earlier age when it was not the custom, except in the case of the sick, to communicate apart from Mass. But in these days, *pace* the liturgical purists, it is permitted, and it is the desire of the Church that the faithful should communicate daily. Certainly it can be shown that Pius X had in mind daily Communion during daily Mass, and canon 865 urges all who assist at Mass not to be content with spiritual communion but to communicate sacramentally. But we cannot find any opinion on the point raised, apart from a short discussion in *l'Ami du Clergé,* 1912, p. 361, which actually leaves the difficulty unsolved.

Our own opinion is that Holy Communion is preferable; firstly, because it brings grace to the recipient *ex opere operato·,* secondly, because the most excellent way of participating in the Sacrifice is to partake of it. The Host is consecrated through a Sacrifice and we participate in the Sacrifice by Holy Communion, a point which should never be forgotten even when Holy Communion is received at a time when Mass is not said.

On the other hand, it could be pointed out that the Church commands weekly assistance at Mass but Holy Communion only once a year, which would appear to argue that assisting at Mass, without receiving Holy Communion, is more important than receiving Holy Communion without assisting at Mass. Probably the best practical advice to give, though it does not solve the point raised, is that the person should hear Mass and receive Holy Communion on alternate days.

131.—Communion on Holy Saturday

In some religious communities it seems to be the custom not to receive Holy Communion on Holy Saturday, since this apparently used to be the liturgical rule. Should one inform them that nowadays the whole community ought to communicate ?

Canon 867, §3: In Sabbato Sancto sacra communio nequit fidelibus ministrari nisi inter Missarum sollemnia vel continuo ac statim ab iis expletis.

Canon 869: Sacra communio distribui potest ubicunque Missam celebrare licet. . . .

S.C. Cone., 20 December, 1905, quoted in *S.C. Sacram,* 8 December, 1938: Si quae Instituta, sive votorum solemnium sive simplicium, quorum in regulis aut constitutionibus, vel etiam in calendariis Communiones aliquibus diebus affixae et in iis iussae reperiantur, hae normae mere dircctivae non tamquam praeceptivae putandae sunt.

(i) Notwithstanding directions such as T.R.C., n. aj6t, some pre-Code authors, including Cardinal Gasparri,[1] held that the faithful should not communicate on this day unless there was a custom to the contrary'; but it

[1] *De Eucharistia,* §1090.

should be noted that, long before the Code, certain decrees which required a custom to justify the practice were not included in the *Decreta Authentica.* The question is now beyond all discussion from canon 867, §3, but a relic of the ancient discipline still survives in the rule which prohibits the reception of Holy Communion on this day except during Mass or immediately afterwards. Hence, in chapels where Mass on Holy Saturday is not authorized, Holy Communion may not be distributed; where authorized its distribution is permitted only in connexion with the Mass. Canon 867, §3, is, therefore, an exception to the general rule of canon 869.

(ii) Bearing in mind the Instructions of the Holy See against unduly urging frequent Communion on the faithful, especially in communities,[1] one should be averse to telling a community that they all ought to communicate at the Holy Saturday Mass. Some may, perhaps, be unwilling, owing to the length of the Mass or for any other reason whatever. The phrase in *Sacra Pridentina Synodus,* 1905, was directed against community rules restricting the reception of Holy Communion to certain days; the same phrase quoted in the 1938 Instruction, within a section discouraging general Communions, is inserted for an exactly opposite purpose. But in both documents the point is that the practice of frequent Communion is an invitation, not a command. The community may, therefore, be told that there is no longer any prohibition against communicating on Holy Saturday; but, if they prefer to continue the old custom of not communicating on that day, they may properly do so.

132.—Communion Twice on Christmas Eve

Christmas Eve falling on Sunday, a person who enjoys the faculty of assisting at afternoon Mass intends to assist at the Sunday Mass in the afternoon, and to fulfil the Christmas obligation by assisting that same afternoon at a second Mass, the anticipated Christmas midnight Mass. May Holy Communion be received by that person at both Masses?

Canon 857: Nemini liceat sanctissimam Eucharistiam recipere, qui eam eadem die iam receperit, nisi in casibus de quibus in canon 8j8, §1 (. . . nisi mortis urgeat periculum, aut necessitas impediendi irreverentiam in sacramentum).

Canon 867, §4: Sacra communio iis tantum horis distribuatur, quibus Missae sacrificium offerri potest, nisi aliud rationabilis causa suadeat.

Motu Proprio, 1 December, 1940, ad VI: Ac praeterea christifideles omnes, qui pridie Natalem Domini sub vesperam Eucharistico Sacrificio intererunt, etiamsi iam mane Eucharistico pabulo sesc enutrierint, ad Sacram tamen Synaxim accedere poterunt, dummodo rite expiati riteque dispositi quatuor itidem iam horas nihil cibi vel potus sumpserint.

The faithful arc bound to satisfy the Sunday obligation on Christmas Eve,[2] in addition to being present at the afternoon midnight Mass, and it seems to us that an inevitable conclusion follows: they may communicate at both Masses no matter at what hour the Sunday Mass takes place. The

[1] *S.C. Sarram,* 8 December, 1958.

only reason for denying them this freedom would be that the law permits the reception of Holy Communion only once a çlay. But the *Motu Proprio* itself, by expressly sanctioning a second reception in the afternoon, makes it clear that the anticipated Christmas Mass is reckoned as a separate day. We think, therefore, that it makes no difference whether the first reception was in the morning, as stated in the *Motu Proprio,* or in the afternoon; for, in both cases, the Mass at which Holy Communion is received is legally on a day distinct from Christmas Day. The document mentions the morning because, in the common law, anyone who received Holy Communion at the Christmas Eve Mass would do so in the morning of that day: the contingency of the Mass proper to Christmas Eve being in the afternoon is not considered, because it is, even in war time, only lawful by indult.

133.—Non-Catholic Seeking Communion

A priest distributing Holy Communion observes ayouth at the altar rail whom be knows with certainty to be a non-Catholic. What is the correct procedure ?

S. *Poenit.,* io December, i860; *Fontes* n. 6426.20: An possit SSma Eucharistia notorie censura innodatis ministrari, quin prius fuerint, ut par est, cum Ecclesia reconciliati ? *Negative.*

Canon 731, §2: Vetitum est Sacramenta Ecclesiae ministrare haereticis aut schismaticis, etiam bona fide errantibus eaque petentibus, nisi prius, erroribus reiectis, Ecclesiae reconciliati fuerint.

If the non-Catholic status of the youth is known, not only to the priest but to the rest of the faithful in the church, the priest must obviously refuse him Holy Communion; the circumstances are similar to the case of a public sinner publicly seeking the sacraments.1

The same answer must, in our view, be given, even though it is assumed, firstly, that the youth is in good faith, therefore not a public sinner; secondly, that he has not incurred the censure attached to heresy; thirdly, that his status is unknown to the faithful in the church. The accepted doctrine of all the moralists permits the administration of the sacraments to the unworthy, who are not publicly known to be such, on a principle of natural law requiring a person's good name and reputation to be preserved. But, in these days at least, no ill-repute normally attaches to being publicly regarded as a non-Catholic; nor is the censure usually incurred by such, notwithstanding our practice of ritually absolving from excommunication when receiving them into the Church. Canon 731, §2, it will be observed, is a prohibition quite distinct from that implied in the penalty of canon 2314. It is not merely an ecclesiastical law, nor is it exclusively based on the necessity of avoiding scandal; it is a divine positive law, an application of the principle that all the sacraments are external signs of the unity of faith existing between all the members of the visible Church, and therefore to be given only to such, even though quite conceivably others might be capable of receiving them validly and fruitfully. Cf. Q. 20.

The only exception to this rule of canon 731, §2, apart from the case where the priest's knowledge is obtained from the confessional, is the

1 De Smet, *De Sacramentis,* §161.

modern teaching, supported by some Roman decisions, which permits *servatis servandis* the administration of Penance and Extreme Unction, but never of the Holy Eucharist, to non-Catholics in danger of death who are destitute of their senses.

The correct procedure in the above case is for the priest to pass over this youth, and afterwards explain to the congregation, if it is feared that otherwise the youth's reputation may suffer, that he was not a Catholic and had approached the altar rail through a misunderstanding.

134.—Women Communicating Hatless

Does a priest act rightly or not in refusing Holy Communion to women communicants with uncovered heads?

I Cor. xi, 13, 16: You yourselves judge: doth it become a woman to pray unto God uncovered ? . . . But if any man seem to be contentious, we have no such custom, nor the Church of God.

Canon 1262: Viri in ecclesia vel extra ecclesiam, dum sacris ritibus assistunt, nudo capite sint, nisi aliud ferant probati populorum mores aut peculiaria rerum adiuncta; mulieres autem, capite cooperto et modeste vestitae, maxime cum ad mensam Dominicam accedunt.

(i) The law is certain that women must receive Holy Communion with head covered. It was the custom in St. Paul's day, in itself a sufficient reason for the Apostolic injunction, even apart from the teaching of the whole passage in I Cor. xi, 1-16, which is a difficult text to interpret. Clearly, like any other positive law, a reasonable necessity excuses its observance. Women often prefer to go about hatless nowadays, but this preference cannot be regarded as a sufficient reason in itself for not observing the law in so sacred a matter as receiving the Holy Eucharist, a rite which is carefully regulated by the Church in its smallest details. Accordingly, even in parts of the world like China, the Vicars Apostolic are directed to do their best to enforce the rule "sensim sine sensu",1 and the *Congregation of Rifes* directs that women assisting at sacred rites, "per fenestram (vulgo *Coretto')* quae intus Ecclesiam, interiectis transennis, inspicit", must have their heads covered.2

A priest acts rightly in securing, by every lawful means, the observance of the law, e.g. by reproaching delinquents, or by explaining—if he feels equal to the task—the mind of St. Paul. The hatless brigade should bring with them a mantilla for use in church, as many do.

(ii) We do not know of any instance, but it is conceivable in some localities that the non-observance of the law is regarded generally as a grave scandal, and local law may direct the clergy to refuse Holy Communion to women with uncovered heads.

Failing any such law or direction from the Ordinary, it is our opinion that a priest must not refuse Holy Communion to those who, even with no justifying reason of any kind, approach with uncovered heads. It will be seen from the wording of canon 1262 that "capite cooperto" is a separate item from "modeste vestitae". With regard to women and girls immodestly attired we have the Instruction of the *Congregation of the Council,* 12 January,

l *Fontu,* n. 4905,
• N. 5402.4«

1930, chat they arc to be refused Holy Communion. But no matter how strongly one feels about the subject, the lack of any headgear obviously cannot be regarded as immodest, nor is there anything in the Instruction leading us to suppose that it can be construed as such. It is an extremely grievous affront for the faithful to be denied the Sacraments, and it is well merited by public sinners or by persons known to be excommunicated. Refusal is so grave a matter that the discipline must be reserved for those who are publicly known to be in a state of mortal sin.

The writers generally arc reticent about the gravity of this law; they reserve their space, quite rightly, for discussing the serious matter of communicating in immodest attire. Two canonists, however, of undoubted authority, give us the assurance that the law binds *sub lev's* only, and they do it rather neatly, and no doubt to the complete satisfaction of the devout sex, by viewing a hatless woman in exactly the same light as a skull-capped man.

Gasparri, *De Eucharistia,* §1132: "Ceterum quae diximus de corporis ornatu in Ecclesia pro Missae adsistentia, a fortiori repetenda sunt pro sacra communione. . . . Proinde vir pileolum non gerat; quod tamen veniale peccatum non excedit et omni culpa vacat si rationabilis causa sit et absit scandalum. Id et de mulieribus, velatum caput non habentibus, repetendum est . . . sacerdos neminem exinde a sacra mensa repellere debet aut potest."

Cappello, *De Sacramentis,* §519: "Vir nudo capite communicare debet. Quare pileolum gestare nequit; id tamen culpam venialem non excedit. . . . Quod et de mulieribus, velatum caput non habentibus, dicendum est."

135.—Communicants and Cosmetics

It is not, 1 suppose, ever permitted to refuse Holy Communion io a communicant whose face is made up beyond all reason. But could you indicate some motives which could be suggested to women, inducing them to refrain from this objectionable practice, and particularly from the use of lip-salve, when approaching Holy Communia-, ?

It is the rule of canon 1262, §2, that women should be modestly apparelled in church, and especially when approaching Holy Communion. The Holy See has further directed that those who gravely offend in this matter arc to be refused Holy Communion.[1] But by no stretch of the imagination may one regard a startling and garish make-up to be so gravely sinful in itself as to justify refusing the Sacraments. "Lex naturalis et ecclesiastica iubet ut Eucharistia reverenter accipiatur: quod etiam de *externa reterentia* intellegendum est. Attamen, cum haec varia ratione pro variis regionibus et personarum condicionibus exhiberi soleat, nullus vestitus vel agendi modus arguendus est peccati, etiam venialis, nisi, in his concretis adiunctis, communiter aestimetur debitae reverentiae vel modestiae contrarius."[2]

The matter is discussed, either directly or by implication, by manualists and others under the heading of *scandalum* and *ornatus mulierum.* The compiler of the vast index to the works of Suarez, twenty-eight quarto volumes, was

[1] *S.C. Cone.,* 12 January, 1030.
[2] Génicot, *Theol. Moralii,* II, §204,

so impressed by the connection between these two things that he gives only three words to the important subject of woman: "Mulier—vide scandalum XII".1 St. Thomas in II–II, 169, 2, ad 2, explaining the rather severe attitude of St. Cyprian to the practice of painting the face, states a principle which is still valid: . mulierum fucatio, de qua Cyprianus loquitur, est quaedam species fictionis, quae non potest esse sine peccato . . . non semper tamen talis fucatio est cum peccato mortali, sed solum quando fit propter lasciviam, vel in Dei contemptum; in quibus casibus loquitur Cyprianus; sciendum tamen, quod aliud est fingere pulchritudinem non habitam, et aliud occultare turpitudinem ex aliqua causa provenientem, puta aegritudine, vel aliquo huiusmodi; hoc enim est licitum. . . ." The practice is gravely sinful if done with lascivious intent, and in certain periods of the past it was restricted to women of loose character. But, at the present time, in many countries, it is done without any evil intention. It is the fashion at the moment, and many contend that, on certain occasions at least, a woman is not appropriately "dressed" without it. We may not like the fashion and must await the time when it will become outmoded. But granted it is the fashion with us, at the present day, cosmetics may be used without any suspicion of lasciviousness: for covering up defects, as St. Thomas teaches; for pleasing a husband or for securing one; or simply for the purpose of being in the fashion.

Provided due moderation is observed in the language employed, and the practice is not described as in itself even venially sinful, we think that the clergy could, with perfect propriety, urge women to refrain from the use of cosmetics, and particularly from lip-salve, when approaching Holy Communion. Fashion or no fashion, it is clearly, as St. Thomas says, "quaedam species fictionis". If there is one moment in our lives when we should put away all pretence, it is at the time of receiving Holy Communion. Grace is given in the sacraments *ex opere operato,* but also in accordance with the dispositions of the recipient, amongst which humility must hold the first place. "O res mirabilis ! manducat Dominum pauper servus et humilis." Studiously to appear more handsome than we really are, at the moment of receiving One who is content, for our sake, to appear less than He really is, can be described, restrainedly but effectively, as an elementary lack of humility.

The desire to please the opposite sex is perfectly legitimate and good, but no Catholic woman is presumably occupying her mind with this when going to Holy Communion. She is not only banishing it from her own mind, at so sacred a moment, but is also presumably not desiring to be the occasion of desire to men who are approaching Holy Communion at the same time. It was the question of scandal to others that St. Paul dealt with in the Eucharistic doctrine of I Corinthians xi, and his words can easily be applied to this topic: "What shall I say to you ? Do I praise you ? In this I praise you not."

There is, finally, the positive law of the Church regarding contact with the Sacred Species. The Holy Eucharist should not come in contact with lip-salve. The danger of it doing so is, perhaps, slight, and we think the emphasis should be rather on other considerations than this. But it is a point which would very likely carry weight with some women com-

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l Optra. Vivés cd 1878. The devout sex will find a suitable reply in the Index to the *VFtstminster Provincial Councils*, "Avaritia—vide Rectores"·

municants, who might be disposed to contest the validity of the other considerations we have mentioned.

It is clearly within the competence of the Church to make a fresh positive law on the subject, but it is not open to a parish priest to do so on his own authority, since the people enjoy the right, in the common law, to receive Holy Communion wherever Mass is being celebrated, unless they are excluded on some certain title

136.—Precedence in Receiving Communion

It is my custom, in a nuptial Mass, to communicate the bride and bridegroom before the servers, since they have the place of honour on this occasion. Some, however, maintain that the server, even if a layman, always precedes everyone else, including clerics who are not serving.

Rituale Romanum, Tit. iv, cap. ii, n. 4: Postea ad communicandum accedit, incipiens ab iis qui sunt ad partem Epistolae; sed primo, si Sacerdotibus, vel aliis ex Clero danda sit Communio, iis ad gradus altaris genuflexis praebeatur. . . . N. 11 : Intra Missam autem communio populi statim post communionem Sacerdotis celebrantis fieri debet. . . . N. 12: Itaque, si qui sint communicandi intra Missam, Sacerdos . . . porrigit communicandis Eucharistiam, incipiens a ministris altaris, si velint communicare.

Missa Votiva pro Sponso et Sponsa'. Sacerdos . . . postquam sumpserit Sanguinem, communicet Sponsos : et prosequatur Missam.

J.R.C., 15 July, 1658, n. 1074: In casu praedicto ministrum sacrificii non ratione praeeminentiae, sed ministerii, praeferendum esse ceteris quamvis dignioribus.

30 January, 1915, n. 4528: Nomine ministri altaris vel sacrificii Missae venit quilibet clericus vel laicus, Missae ad altare inserviens, qui praeferendus est ceteris in distributione sacrae Synaxeos; cauto tamen, ut laico inservienti praeferantur clerici, et clericis minoris ordinis alii in maiore ordine constituti, aut personae quae superiori polleant dignitate liturgice attendenda per se (uti regum) vel per accidens (uti sponsorum in Missa pro benedicendis nuptiis).

The liturgical texts quoted above do not expressly solve the difficulty proposed. The writers generally deduced from them that the lay server should precede all others, although some allowed an exception for priests or deacons communicating, e.g. on Holy Thursday, in surplice and stole. The reply, S.R.C., n. 1074, does not expressly consider the presence of clerics in major orders: it directed in general terms that the server preceded "monialibus vcl ceteris ibidem praesentibus"; but the conclusion could rightly be drawn that the server preceded everyone, including the clergy.

The last direction, T.R.C., n 4328, makes the rule now perfectly clear, namely that the server has precedence only over others of the same liturgical rank as himself. Therefore, when clerics arc communicating they take precedence over the lay server; likewise, the bride and bridegroom at a nuptial Mass have the same precedence. If the server at a nuptial Mass is a cleric in major orders, the point is not expressly decided, but wc agree with a commentator on this decree in *Periodica,* 1919, p. 249, that an exception

to the usual rule of clerics preceding the laity is here established in favour of bride and bridegroom. Another fairly common case indicated by the same writer, on analogy with the exceptions mentioned in the decree, is the precedence to be given to the parents of a newly ordained priest at his first Mass.

137.—Genuflecting at Communion

Should the faithful who have just received Holy Communion bow or genuflect when retiring from the communion rails? Some maintain that they should bow only, for the reason that they bave just received Holy Communion. Others, however, assert that they should genuflect, because a priest celebrating ‘‘coram Sanctissimo exposito" also genuflects before turning to say the last “Dominus vobiscum" and before giving the last blessing. What if only one or two persons receive Holy Communion and the priest bas already reached the altar before the communicants go back to tbeir place?

(i) It is certain that persons in white choir who are communicating should genuflect after receiving Holy Communion. From this it may be deduced that the laity communicating at the altar rail act correctly if they likewise genuflect after receiving. This is the decision given twice in *l'Ami du Clergé,* 1912, p. 64, and 1927, p. 590. Authorities quoted for this view are De Amicis, I, p. 259, and J. Barberis, *Manuale di Sacre Ceremonie,* p. 422. For the most part the writers do not advert to the point, though there is complete agreement concerning the genuflexion by those in white choir. We think that, if the priest has returned to the altar before the communicants depart from the altar rail, a genuflexion is not required.

(ii) It may well be, in a crowded church, that the genuflexion is impossible owing to the throng of people coming to the altar and meeting those departing. The laity cannot be marshalled in the same way as persons in white choir. Therefore, in spite of the decision given above, we think that the custom of not genuflecting, where it exists, may be continued. The custom has, no doubt, arisen owing to the grave inconvenience of genuflecting, and this is always recognized as a sufficient reason for not observing a positive law. The 5.R.C. has often directed that a custom of not genuflecting, in other circumstances, may be continued. Cf. 26 September, 1868, n. 3182, a reply tolerating such a custom on the part of certain canons, which was clearly opposed to the rubrics of the Missal.

138.—Nine Fridays and Good Friday

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Since the first Friday in certain years falls on Good Friday, what would be the best answer to give to the faithful who ask whether the series must be started again, seeing that Holy Communion may not be received on Good Friday ?

The text of what is known as *The Great Promise,* which St. Margaret Mary narrates with great humility, requires the Communions to be pn nine consecutive Fridays. The writers on the subject all agree that if the nine Fridays are interrupted, even through no fault of the communicant, the novena must be started again by those who piously desire to comply with

the conditions attached to the promise. This interpretation is recommended by a writer in *Collationes Bnigenses,* 1896, p. 150, as, at least, the safer course to pursue, even when the interruption is caused by the occurrence of Good Friday. "Ex quibus verbis sequitur probabiliter interruptionem etiam coactam non esse admittendam, nisi velimus adhuc extendere amplissimum jam privilegium quod nimia caritate Christus dicitur promisisse. Tutius proinde est adhortari fideles ut novam seriem incipiant. Idquc eo magis suadendum est quod certe non eo fine inducuntur SS. Cordis cultores ad hanc piam praxim, ut revolutis novem mensibus, jam abstineant a S. Communione, sed potius ut facilius huic sanctae consuetudini inhaerentes, perveniant ad gratiam perseverantiae finalis, cooperando gratiis abundantioribus quas SS. Cor Jesu cultoribus suis larga manu elargitur." The same conclusion is reached by the anonymous author of an admirable work entitled *The Nine First Fridays.*[1] The series, he asserts, must be started again if one wants to be on the safe side.

No doubt a case could be made out for the view that it suffices to communicate on Holy Thursday or Holy Saturday, arguing analogously from such practices as the Gregorian Masses, the scries of which is certainly not interrupted by the omission of a Mass on Good Friday. But we are of the opinion that this view should not be spread amongst the people, even though it may be *probably* correct. For it is clearly because they wish to be on the safe side that the faithful undertake to observe the conditions attached to the promise.

§3. THE EUCHARISTIC FAST

139.—Mass Not Fasting

Through a misunderstanding the priest fails to arrive for the Sunday midday Mass at which 200 people are present. May the parish priest celebrate Mass not fasting in order to enable the people to fulfil their obligation ?

(i) This familiar difficulty was discussed by Mgr. Cronin in *The Clergy Reveiw,* II, 1931, p. 90. The answer to the question, as it stands, is usually given in the negative, since it is the practically unanimous teaching of all the authorities that the law of observing the fast is graver than that of hearing Mass. Quite often we find that a reply of the *Holy Office,* 2 December, 1874, is quoted in this sense, namely as expressly comparing the gravity of the two laws and declaring in favour of the fasting law. The text, as contained in *Fontes,* n. 1034, is as follows: "Sc per ragione di scandalo o di ammirazionc si possa giammai celebrare la seconda messa dopo la prima quando già è stato infranto il digiuno. R. Negative." It is pointed out, and we think rightly, that in this context "scandal" is not to be taken in the strict theological sense of being the occasion of another's sin, but in the looser sense of "admiratio"; the necessity of avoiding grave scandal, in the strict sense of the word, is a sufficient reason for celebrating non-fasting.

The law is an unusually grave one, but it cannot be claimed, from the

1 Bums Oates (1934), p. 74; also C.T.S. pamphlet, Do, 146, p. 12.

direction of the *Holy Office*, that we may never apply to it the principle that no positive law binds *aim gravi incommodo.* The kind of scandal which sometimes may be feared, as the writers note, includes the danger of stirring up animosity and ill-feeling against the priest. It would seem that this could easily be removed by explaining the circumstances to the people, though even here one must go warily. In Mgr. Cronin's recollection, a priest who explained that he could not say Mass because he had taken the ablution was understood to have frankly admitted that he could not get absolutioni A commoner and more actual example of real scandal would be the fear that many people would not attend Mass elsewhere, though they could easily do so and are bound to do so.

(ii) It is difficult to avoid the conclusion that what all the argumentation and theological dexterity of the writers amounts to is that one may say Mass not fasting, in order that the people may fulfil their Sunday obligation, a principle which is, in theory at least, almost universally rejected. But, since it is a matter of positive law, it may well be questioned in these days when priests occasionally obtain, for purposes of public utility, permission to celebrate Mass after taking liquid nourishment, whether the older doctrine concerning the relative gravity of the fasting law as compared with that of the Sunday precept can be sustained. Thus Dr. Mulders, after discussing the doctrine given above, writes in N.K.5 1933, p. 55: "Humiliter vero censemus hodie, mitigata cum sit praxis dispensandi in iciunio naturali, etiam in favorem sacerdotis celebrantis, alias quoque causas excusantes tuto posse admitti. Speciatim, cum iam ob solam causam privatam utilitatis vel devotionis sacerdotis obtineri possit dispensatio, nullo modo auderemus damnare parochum, qui ob solam rationem quod notabilis fidelium pars dic dominica vel festo de praecepto secus Missae adstarc nequiret, Sacrum iteraret." We are in agreement with this opinion.

(iii) The circumstance usually supposed in this question is that a priest has inadvertently taken the second ablution. If he has taken a breakfast of solid food, Mass may be said for any of the very urgent reasons outlined by the commentators on canons 808 and 858, §1. But, even at the risk of appearing illogical, we are not prepared to extend the opinion given under (ii) to this case, and to concede that Mass be said after a solid breakfast solely in order that a notable number of the faithful may fulfil their obligation. For, whatever may be the developments at some future time, the usual induits at the moment permit only liquid nourishment for appropriate reasons before Mass, and the opinion of Dr. Mulders, which we think reasonable, is based on the present practice.

140.—Eucharistic Fast—Time Computation

In a recent discussion on the computation of time it was held that the liberty allowed by canon 33, §1, *would justify a priest saying his first Christmas Mass at midnight {legal time'), breaking his fast, and then saying the other two Masses. Is this opinion probable?*

Canon 53, §1: In computandis horis diei standum est communi loci usui; sed in privata Missae celebratione, in privata horarum canonicarum recitatione, in sacra communione recipienda et in iciunii vel abstinentiae

lege servanda, licet alia sit usualis loci supputatio, potest quis sequi loci tempus aut locale sive verum sive medium, aut legale sive regionale sive aliud extraordinarium.

Canon 6.4: In dubio num aliquod canonum praescriptum cum veteri iure discrepet, a veteri iure non est recedendum.

(i) The interpretation of canon 53 always raises some dispute owing to the very wide liberty allowed by the law itself, and the still wider opinions held by probabilists in its application. The view may now safely be followed that one is not bound to adhere inflexibly, for different actions or obligations, to one reckoning of time: one may choose the legal time for one obligation and mean time for another, even within the same twenty-four hours. Thus, Office for the following day may be said at twelve midnight legal time (11 p.m. mean time) and the Eucharistic fast on the same day is not broken by taking food before 1 a.m. legal time (12 midnight mean time): legal time is chosen for the breviary obligation and mean time for that of the Eucharistic fast. We do not say that there is a chorus of agreement on the lawfulness of this interpretation; read the controversy, for example, in the *Ecclesiastical Review,* 1952, December, p. 634; but the writers who defend it include such authorities as Michiels, *Normae Generales,* II, §140 seq.; Vermeersch-Crcusen, *Epitome,* I, §148; Chelodi, *lus de Personis,* n. 89; Van Hove, *Commentarium Eovaniense,* I, iii, §298. It is solidly probable even when extended to two diverse laws affected by one action, e.g. eating meat which on one computation does not break the Friday abstinence and on another computation does not break the Eucharistic fast.

Maroto, *Institutiones,* I, §258, and many others dissent from this view, relying on the accepted teaching even of thorough-going probabilists forbidding the use at the same time of a double probability, since one would be certain to break one law or the other. But the answer, as given by Chelodi, seems absolutely sound: in this matter of choosing a computation of time according to canon 33, it is not a question of choosing probable opinions but of using the liberty which the law itself permits.

(ii) On the above reasoning it does seem, at first sight, that food could be taken after midnight Mass without breaking the Eucharistic fast for the following day, assuming that the reckonings of time were favourable; for the law requiring a fast from midnight before receiving the Holy Eucharist (canon 858) is quite distinct from the law regulating the hour when Mass may be said (canon 821): one computation is chosen for determining the hour of beginning midnight Mass and another for the Eucharistic fast on the following day.

But actually none of the writers quoted draws this conclusion, and the reason is that their doctrine—liberal though it is—is subject to this limitation at least: we may never use different computations of time for settling an obligation arising from one and the same law: that is to say, there are not actually two diverse laws but only one in our present problem—the law' of the Eucharistic fast.

To take another example, the ecclesiastical fast binds from midnight to midnight for twenty-four hours; if one could juggle with the computations at either end, the time could be reduced to twenty-three hours or less, which would make the law absurd. Unless, therefore, the law is to be made absurd and contradictory, the following rule must always limit one's choice of reckoning: if one computation is chosen for the fulfilment of one and

the same precept, that reckoning must be retained for the whole time within which the precept binds. The law of the Eucharistic fast is of obligation from midnight: if midnight legal time is chosen for the first Mass, it must be retained for the other Masses because the three Masses belong to one day.

The only possible method of allowing liberty to break the fast would be to fast for the whole of Christmas Eve[1] There arc liturgical objections to regarding Midnight Mass as a Vigil Mass, but there would be no intrinsic absurdity or contradiction in this procedure. In any case it is wholly unattractive and we have not seen it suggested by anyone. Very few of the writers, in fact, advert to the problem we have been discussing. Those who do mention it are agreed in disallowing the interpretation suggested in this question. Cf. *TAmi du Clergé,* 1957, p. 278; Van Hove, *op. cit.,* §300, quoting Weigert, "leiunium naturale und die drei Weinachtmesse", *Theologiscb-prakiisebeQuartalschrift,* 1927, p. 335.

141.—Eucharistic Fast: Saliva

Is tbe natural fast, required before Holy Communion, broken by swallowing (/) particles offood left in the teeth; (ii) afen[1] drops of water whilst cleaning teeth; (Hi)juice or minute particles of tobacco whilst smoking; flow of saliva caused by holding an empty pipe between the teeth?

The answer to each of these questions is that the fast is not broken. The authority for this is, for the most part, the teaching of the moral theologians on the subject, who rightly tend to a liberal solution in order not to encourage a foolish scrupulosity. Often there is complete agreement, and we can, at least, rely on their opinions being "probable". The following solutions occur in most of the manuals. We have chosen that of Gury-Tummolo-Iorio, *Compendium Theologiae Moralis,* ed. 5, Vol. II (1935).

(i) The fast is not broken by swallowing particles of food left in the teeth. This is certain from *De Defectibus,* IX, 3: "Si reliquiae cibi remanentes in ore transglutiantur, non impediunt communionem, cum non transglutiantur per modum cibi, sed per modum salivae . . ." The same answer applies even though these particles are swallowed voluntarily.[1] We are of the opinion that the use of false teeth makes no difference, even though they are replaced without being previously cleansed. *Ubi lex non distinguit,* etc.

(ii) The fast is not broken. Cf. rubrics *ibid'.* " ... si lavando os deglutiatur stilla aquae praeter intentionem". If swallowed voluntarily and unmixed with saliva the fast is broken "quia tunc nihil deest ut rationem cibi aut potus habeant".[2] If mixed with saliva the fast is not broken even if swallowed voluntarily.

(iii) The fast is not broken by taking snuff, nor by smoking tobacco in its various forms, nor even by chew'ing tobacco.[3] It is, of course, agreed that these practices are unbecoming unless done for some reasonable cause. Swallowing minute particles of tobacco should be regarded, in our opinion, in the same way as swallowing drops of water as in (ii). If saliva mixed with

1 Tununolo-Iorio, *op. cit.,* §352.
• *loc. cit.*
• *loc. cit.*

tobacco juice does not break the fast, *a fortiori* the use of an empty pipe does not.

142.—Eucharistic Fast: Lozsnge

***If** one takes a cough lozenge five minutes before midnight and keeps **it** in the mouth until **it** is wholly dissolved half an hour later, is the Eucharistic fast broken ?*

The fast is broken by taking after midnight into the mouth, and subsequently into the stomach, digestible substances, not as saliva or in the process of breathing, but in the ordinary manner of taking food or drink. Each of the points in this definition, which now represents the common teaching, is open to discussion, and the proper attitude in solving doubts is to favour a liberal interpretation, wherever possible, in order to discourage scrupulosity about trifles. But we may never adopt the view, no matter how small may be the quantity taken, that smallness of matter is of no account; for a person is either fasting or not fasting, and the fast is broken by any quantity of food or drink taken within the terms of the above description.

From *De Defectibus,* IX, 3, it is quite certain that the remnants of food remaining in the mouth are to be considered as being swallowed *per modum salivae,* and although this text has in mind an involuntary action, most of the commentators rightly decide that the fast is not broken by voluntarily swallowing these particles of food.

It would seem to follow from this teaching that a cough lozenge, or any other kind of soluble sweet, is to be considered as a remnant of food remaining in the mouth. But I cannot find any writer who draws this conclusion. On the contrary, even those who are well known for liberal views, as Gcnicot-Salsmans, *Institutiones,* II, §200, hold that the fast is broken: "Jejunus non est qui post mediam noctcm trajicit cibum, ante illud tempus in os immissum et lente saliva solvendum, puta *electuaria."* Cf. also Tummolo-Iorio, *Theologia Moralis,* II, §354, or Davis, *Moral and Pastoral Theology,* III, p. 215, amongst the manualists; and in current periodical literature: Koerperich in *Collationes Namurcenses,* 1939, p. 4; Twomey in *Ecclesiastical Review,* May 1940, p. 414. The latter writer records that this is the view of practically all authors, the implication being that there are some who dissent; but they are not named, and failing sufficient data on which to form a judgement, the conclusion must be that the dissenting opinion is not solidly probable.

The reason given for the stricter solution, which we think is the correct one, is that a soluble lozenge is of its nature a substance which is swallowed continuously *per modum cibi,* and cannot therefore be regarded as a remnant of food swallowed *per modum salivae.*

The only exception permitted by many is in the case of a substance, such as chloride of potassium, which is found to be still in the mouth, practically intact, after several hours; or in the case of any lozenge which is normally expected to dissolve before midnight and has not done so owing to some accidental or inexplicable reason. In these cases, what has actually been swallowed may be regarded as *per modum salivae,* and if the substance is removed immediately the fast is not broken. Cf. Van Hove, *De Eucharistia,* P· <7θ·

For the view that other kinds of lozenges arc permitted it might be said

that their solution is a continued digestion rather than a continued eating. Physiologists may, indeed, regard the reduction of food in the mouth as part of the digestive process. But it seems to us inconclusive for the purpose of proving the contention that the fasting law permits the absorption of lozenges and sweets in the mouth after midnight. For, in the first place, the canon law considers the common estimation in things of this kind, not the scientific definition: for example, what constitutes valid matter for baptism is not a substance which has the chemical constituents of water, but water in the common estimation. We think it beyond dispute that the popular and common notion of digestion refers it to nourishment which has been swallowed: a man who is unable to masticate his food is not said to be suffering from indigestion.

In the second place, this is precisely the difference between n. 2 and n. 3 in *De Defectibus* IX, for in n. 2 we arc told, perhaps unnecessarily, not to worry about undigested food, and in n. 3 not to worry about fragments of food remaining in the mouth. The reason for the latter assurance is not that these fragments are in process of digestion, as in n. 2, but that they arc considered to be swallowed *per modum salivae.* The rubric is taken, as Many points out in *Praelectiones de Missa,* §176.3, almost verbally from St. Thomas *Summa I'beol.,* III, 80, 8 ad 4: "reliquiae tamen cibi remanentes in ore, si casualiter tranglutiantur, non impediunt sumptionem huius sacramenti, quia non trajiciuntur per modum cibi, sed per modum salivae". The purpose of the rubric is to allay foolish scrupulosity, and we think every reasonable person would come to this conclusion even though no rubric existed.

143.—Eucharistic Fast: Liquid Paraffin

Can it be safely held that liquid paraffin, taken in a small quantity on rising in the morning, does not prevent reception of Holy Communion ?

We must confess that our first reaction to this question was a decided negative, since food and drink must be understood, as in all these questions, according to the common estimation. The smallness of the quantity is absolutely irrelevant, and it would appear that even a spoonful of this consumable liquid is drinking in the common estimation, and is therefore not permitted before Holy Communion.

But, on examining the authorities, it was found that in order to formulate some principle which will eliminate scrupulosity over such *minutiae* as swallowing small pieces of wood, the criterion employed is whether the material swallowed is capable of being assimilated or digested, and a decision is reached not merely from the common estimation but from chemical considerations. It is maintained, from the chemical point of view, that certain substances such as vaseline or paraffin are not assimilated into the body, but are purely lubricating, so to speak, and their medicinal value is precisely as such. If this is so (and there is no ground for contesting the scientific fact) it would follow that they are to be permitted on the criterion enunciated.

St. Thomas in III, 80, 8 ad 4, states: "et ideo neque post assumptionem aquae, vel alterius cibi, aut potus, vel etiam medicinae, in quantumcumque parva quantitate, licet hoc sacramentum accipere: nec refert utrum aliquid

huiusmodi nutriat, vcl non nutriat, aut per se, aut cum aliis, dummodo sumatur per modum cibi vcl potus". St. Alpbonsus, however, argues that St. Thomas's phrase, "nec refert utrum nutriat vcl non", does not clearly show that he is referring to materials which cannot be assimilated.[1] We cannot quite follow St. Alphonsus in this interpretation. Neither writer, as a matter of fact, has in mind the question of taking liquid lubricant. But the modern manualists who expressly discuss it agree that, arguing on a chemical basis, the fast is not broken. Tummolo-Iorio: "Non frangit ieiunium id quod nullo modo est altcrabile seu assimilabile . . . sive hoc chemice demonstretur sive ex hominum communi aestimatione ita reputetur. Hinc olea quaedam mineralia, oleum paraflînae, vaselinae, etc. . . ."[2] Vcrmcersch: "Quare quod chcmicc demonstretur nullo modo intus in aliud converti posse sed non mutatum per corpus transire (v.g. paraffine) impune ante communionem sumi potest".[3] Davis: "What is thought to be food, but which, as the science of chemistry proves, cannot be changed or digested, is not food at all, and will not violate the fast, as paraffin."[4]

Accordingly, there is ample authority for the view that medicinal paraffin does not break the fast, and individuals may frame their own conscience on this opinion. Personally, we think that, viewing the matter from what the common estimation of men regards as drink, paraffin is not permitted. It is a point which could usefully be submitted to the Roman Curia for a decision.

inadvertently had not been properly purified. What is the proper procedure to adopt, assuming that the altar has a tabernacle? Shoidd the particles be placed in the ciborium within the tabernacle or consumed immediately by the priest?

The point is explicitly settled in *De Defectibus,* VII, 2: "Quod si deprehendat post sumptionem Corporis et Sanguinis aut etiam post ablutionem, reliquias aliquas relictas consecratas, eas sumat, sive parvae sint sive magnae, quia ad idem sacrificium spectant." The notion of pertaining to the same sacrifice is applied by St. Alphonsus and the writers generally,[5] even to the case where the particles arc not perceived until the priest has returned to the sacristy: if he is still vested they should be consumed; if he has unvested they should be placed in the tabernacle and not consumed, except for one of the causes justifying Communion not fasting, e.g. fear of irreverence.

The words "sive parvae sint sive magnae" in the above rubric need to be interpreted in the light of the following rubric, n. 3: "Si vero relicta sit Hostia integra consecrata, cam in Tabernaculo cum aliis reponat, etc." The two rubrics distinguish between "reliquiae magnae" and "hostia integra". If the fragment, though not a complete Host, is sufficiently large to serve as Holy Communion for the laity, we are of the opinion that it should

1 *TbtoL· Moralis*, VI, §395.
1 *Tbcol. Moratis,* II,
1 *Tbsol. Moralis*, ffi, S393-
• *Moral Theology,* III, p. 215.
1 7*btol. Moralis,* VI, ^251 ; Marc-Gcstcrmann, *Tbcol. Moratis,* II, §1542, ad Iv.

be placed in the tabernacle as being the equivalent of a host and not simply a fragment. Thus Cappello: "Quod vero de fragmentis dicitur, non potest intclligi de integra hostia, aut tali parte, quae commode distribui possit in lidclium communione; nam ut haec sumi queat a non iciuno, requiritur, ut post ultimam missam desit locus decens, etc."[1] What has been said applies only to a priest consuming particles remaining from his own Mass; other particles must be dealt with on the usual principles justifying a non-fasting Communion.

145.—Eucharistic Fast: Ablutions

A priest has obtained an induit enabling him to take some liquid nourishment before Mass. Should he or should he not take the ablutions at the first Mass when duplicating?

S. Off., 2-3 May, 1923: Supremae Congregationi S. Officii propositum fuit quaesitum: "An sacerdotes dispensati a ieiunio eucharistico ante secundam missam, sumere possint ablutionem in prima." Et S. Congregatio, feria iv, die 2 Maii 1923, respondendum mandavit: *Affirmative.* Insequenti vero feria v, etc. . . . Romae, die 16 Nov., 1922.

The conditions which must be verified before an induit for the non-fasting celebration of Mass will be granted by the Holy See were explained by the *Holy Office,* 22 March, 1923, and 1 July, 1931. The above declaration was called for, firstly, because of the doubt arising from the prohibition of alcoholic liquids which is always contained in the induit; secondly, because of the necessity of avoiding scandal to the faithful. For both of these reasons it would appear that the ablutions should not be taken: wine is forbidden by the induit, and the more observant members of the congregation are accustomed to seeing a priest who is duplicating refrain from taking the ablutions at the first Mass.

The *Holy Office,* nevertheless, has given an affirmative answer to the question, and the reason can only be that the necessity of fully observing the rubrics of the Mass is held to be of greater importance than the above considerations. It will be noticed that the wording of the declaration is merely permissive—"possint" not "debeant"—but we agree with the writer in *Periodica,* 1922, p. 144, that, since the appearance of the above declaration, there is an obligation to take the ablutions in such cases; the obstacle to the observance of the rubrics being removed, they not only may but should be observed; an induit is, indeed, a privilege which one is not bound to use, but a subsequent declaration which makes it possible to observe the rubrics is in no sense a privilege, and one should act in accordance with its provisions.

146.—Eucharistic Fast: The Infirm

(/) There are some people who remain in a permanent state of weakness after an illness. For how long can they continue to exercise the privilege of canon 858?

(ii) What of the first month? A person may be ill without being in danger oj

[1] *De Serramentii,* I, §458, 7.

death. Must such a one, because unable to fast, be deprived of Holy Communion during the first month? There is often a difficulty in hospitals where medicine is ordered, say, every two hours.

(iii) There are others who suffer permanently from some interna! disorder which makes the fast impossible. Is their case covered by canon 858? The case I have in mind is that of a man, apparently healthy and strong, who on account of an internal trouble has to have a drink in the middle of the night. He sometimes manages with great pain to make a monthly Communion, but more often than not he has to miss.

(iv) Are those included who are just well enough to visit a church for Communion, though infirm and unable to observe the fast?

Canon 858, §2: Infirmi tamen qui iam a mense decumbunt sine certa spe ut cito convalescant, de prudenti confcssarii consilio sanctissimam Eucharistiam sumere possunt semel aut bis in hebdomada, etsi aliquam medicinam vel aliquid per modum potus antea sumpserint.

The terms of this principle are such that almost every word affords some consideration of a casuistical kind. A confessor's approval is essential before the privilege may be used, and he will rightly give a liberal interpretation of the law, since it is in favour of sick and suffering people: *favores sunt ampliandi.*

Before dealing with these questions, we may first observe that they appear to take it for granted that the privilege may be used only by those sick people whose illness makes it impossible for them to fast. Actually the law does not make this a condition, since a decision on such a question would, no doubt, be a cause of scrupulosity both for the sick person and for the confessor. Persons otherwise qualified may use the privilege, even though they arc able to fast: "Concessio non requirit ut praedicti infirmi in ea conditione sint, ut ieiunium naturale servare non possint. Unde tales possent etiam quotidie communicare: bis scilicet non ieiuni; ieiuni vero reliquis diebus."[1] All agree, nevertheless, that it is desirable, out of reverence for the Holy Eucharist, to observe the fast, if it is possible, even though the law permits the taking of drink. The outlook is rather the same as the counsel given to the faithful to fast before midnight Mass.

(i) The law does not require the illness to be grave. "Grave" as distinct from "extreme" infirmity (in periculo mortis) is mentioned, for example, in canon 525, in reference to the confessions of nuns. Usually the kind of illness which causes a person to be laid up, *decumbens,* confined to the room if not actually in bed, is serious or grave. But it may happen that it is not grave from a medical point of view, and yet necessitates being "on the sick list"; if the other conditions are present, we agree with Cappello[2] that the privilege may be used; there is no need to require gravity in the illness (which, after all, is rather relative and difficult to determine), since the law says nothing about it. The law itself describes the condition of the sick person as one in which there is no certain hope that health will be quickly restored, "sine certa spe ut cito convalescant". The common interpretation defines *cito* as three or four days. *Convalescant* does not quite mean the same as convalescence, a stage in which the symptoms of disease have disappeared, though the patient may still be enfeebled and unable to perform the ordinary duties of life; it means the regaining of health, and the privilege may be used as long as the person is still regarded as being laid up; cnfecblement after

[1] Tununolo-Iorio, *Theol. Moralis,* II, §jj8.

[2] *Ptriodiea,* 19}5, P- az·

an illness is itself a species of sickness, like old age. This point is further determined in the answer to the third question.

(ii) It is certain that this privilege of the common law cannot be used until a person has been ill for a month. There has been some discussion as to the computation of the month, and an unofficial reply of the *Code Commission* decided that it was not necessary to compute it mathematically, i.e. according to the strict legal rules of canons 31 *seq.*[x]

(iii) The cases of people who suffer from some disorder which makes the fast impossible arc not included under this canon, unless the disorder reduces them to the condition described above in (i). On the data given the case appears not to be included. The notion of being confined to the house, lying ill, is consistent with the interpretation given in (iv) *infra,* namely that ability to reach a church docs not deprive a person of this privilege. But it is not consistent with the condition of a person who, though suffering, is able to go about his ordinary duties. The only remedy for such, and for a sick person before a month's illness is completed, is to seek a personal induit.

(iv) When the decree of the *Congregation of tbe Council,* incorporated in canon 858, §2, first appeared in 1906, it was commonly maintained that the privilege could not be used by sick persons in churches, but was to be restricted to the Communion of the sick in their homes. Ferrcrcs always held the opposite view, which has gradually obtained favour amongst the authors. Pending any decision from the Holy See, the law of canon 858, §2, can be interpreted so as to include those sick people who are able to walk to the church for Holy Communion, provided all the other conditions arc verified. This view is held by the following writers, who have discussed the point:

Iorio, *Theol. Moralis,* II, §338: "Quodsi tales infirmi ad propinquam ecclesiam accedere valeant (vel etiam ad distantem curru aliove modo deferantur) non est ratio cur hac concessione frui non possint, dummodo aliae omnes conditiones in casu verificcntur."

Vermeersch-Creusen, *Epitome,* II, §124: "Attamen usus quidem invaluit benigne intelligcndi vocem *decumbentes.* . . . Moralitcr autem decumbunt etiam ii qui per aliquot horas e lecto surgunt, vel qui ipso morbo usu lecti prohibentur. Nec obstat quod in ecclesia vicina communicent."

Cf. also Davis, *Moral Theology,* III, p. 216, and Cappello reaffirming his interpretation in *Periodica,* 1935, p. 29.

There are many, on the other hand, who hold that canon 858, §2, does not apply in these cases, e.g. Noldin, *De Sacramentis,* §158; Priimmer, *Theol. Moralis,* III, §203; Mcrkclbach, *Theol. Moralis,* III, §283. We think that the liberal opinion, as taught by Vermcersch, Cappello and Iorio, may safely be followed.

147.—Breaking Fast "Per Modum Potus"

In these days a number of people obtain a dispensation from the Eucharistic fast which permits them to take non-alcoholic liquid nourishment before Holy Communion but not solidfood, and I have heard it maintained that such things as uncooked eggs, or solids dissolved in tbe mouth {e.g. sweets'), are to be regarded as liquid. Is this correct ?

[1] 24 Nov., 1927; *Periodica,* 1954, p. 234.

A much more generous interpretation of liquid nourishment is permitted as regards the Eucharistic fast than in the case of the ecclesiastical fast. It is a subject, we fear, which encourages the worst kind of casuistical hair-splitting, but people ask questions and our answers should be based on some kind of reasonable principle, not on mood or instinct. A certain support was given to liberal interpretations by a reply of the *Ho/j Office,* 7 September, 1897, quoted in all the manuals, to the effect that one is permitted to take soup, coffee and other liquid foods in which has been mixed some substance such as wheat, grated bread and the like, provided the resulting mixture retains the nature of liquid: "Respondeatur ad mentem, ut in Abellincn., 4 Junii 1893: La mente e che quando si dice *per modum potus* s'intende bensi che si possa prendere brodo, caffe, od altro cibo liquido, in cui sia mescolata qualche sosunza, come p.e. semmolino, pangrattato ecc., purchè l'insicme non venga a perdere la natura di cibo liquido."[*]

All nourishment is divided, from a culinary point of view, into three categories: solid, slops and liquid. The term *per modum potus* clearly excludes the first and includes the last, but occasionally the second is doubtful, since from the canonical point of view food is either solid or liquid. The certain test of a liquid is that it will pour or run, and there is complete agreement that if the nourishment can be brought within this description at the time it is introduced into the mouth, it is taken *per modum potus.* What the description of the food is during the various stages of its preparation is irrelevant; solids can be reduced to liquids, as beef tea, which is permitted, or liquids can be turned into solids, as cheese, which is forbidden. Accordingly such preparations as ovaltine, which is solid in the tin but liquid when ready for consumption, are certainly permitted. Raw eggs beaten up with milk are permitted, and many of the Latin versions of the above decree expressly mention "ovum dilutum"; whereas a hard-boiled egg is certainly forbidden. A raw or a lightly boiled egg is a good example of the second category of food, and if it is to be permitted at all, it will be because it is reckoned to be more of a liquid than a solid. There is sufficient authority for allowing it.[1]

The views of commentators on the phrase *per modum potus* is best examined in their interpretation of canon 858, §2, which permits nourishment of this kind to sick people under certain conditions. It will be found that a few authors go far beyond the above explanation by including in the term "liquid" whatever is swallowed as such, even though it is certainly solid when introduced into the mouth. On this criterion anything whatever which is not swallowed in its solid state, but dissolved in the mouth, is reckoned to be taken *per modum potus,* e.g. hard sweets. This opinion has, at least, external probability, and the faithful who wish to do so cannot be forbidden to adopt it.

Our own view is that, in the ordinary use of language, no one could possibly refer to toffee, for example, as a drink, and we are in agreement with those authors who forbid anything which is clearly solid before being introduced into the mouth. Amongst these writers is Cardinal Jorio, Prefect of the *Congregation ofthe Sacraments,* a commentator of great authority.[3]

[*] *Fontes,* n. 1192.
[1] E.g. Vcnncersch-Crcuscn, *Epitome,* Π, §124.
[3] *Communion des Malades,* p. 52.

148.—Eucharistic Fast: Indults

Is it possible to get permission for an infirm person to communicate daily after bating broken the fast, it being understood that the person's state of health makes it morally impossible to observe the lan< ?

(i) Local Ordinaries in many places have obtained from the *Congregation of the Sacraments* a triennial faculty, which they may sub-delegate to certain priests or to all within their jurisdiction, by which the terms of canon 858, §2, arc considerably extended. All persons who have completed their fifty-ninth year, pregnant mothers and those suckling their infants, may communicate, even daily, after breaking the fast by taking medicine or liquid nourishment.* This induit is for Hol'and.

Here is the text of another induit obtained by the Archbishop of Malines, 15 December, 1936: . Sacra Congregatio de disciplina Sacramentorum, vigore specialium facultatum sibi a SSmo Domino Nostro Pio XI tributarum, attentis expositis ab Ordinario Mcchliniensi, Eidem benigne tribuit facultates juxta petitas, ad triennium, ut tum fidelibus in sexagesimo anno constitutis et adversa valetudine laborantibus, tum mulieribus praegnantibus, tum aegrotis in nosocomiis degentibus, veniam largiatur aliquid sumendi per modum potus vel medicinae ante SS.Eucharistiae Communionem, bis vel ter in hebdomade de consilio confessariorum durante male affecta valetudine, praegnatione et commoratione in nosocomio, remota quacunque scandali et admirationis occasione. Contrariis quibuscunque minime obstantibus. D. Card. Jorio, *Praef."* Unlike the Dutch induit mentioned, it is only for two or three times a week (canon 828, §2, is "semcl aut bis"), but the persons to whom it is extended are much more numerous than in the canon.

(ii) If the Ordinary has not obtained any special faculties, it will be necessary for the sick person to obtain an induit from the Holy Sec. A petition should be addressed to the Ordinary stating exactly what is requested, and it should be accompanied by a medical certificate. Some say that the petition should mention that a confessor's sanction has been obtained, but this may, no doubt, be presumed if a priest is forwarding the petition. Cardinal Jorio, the Prefect of the Congregation, writes, in his useful work on the subject, that it is quite easy to obtain an induit permitting medicine or liquid nourishment even daily.2 Canon Magnin, secretary at the Paris curia, states that he has forwarded hundreds of these petitions without ever having one refused.3 It will normally be necessary to make an offering for curial expenses.

(iii) Liquid nourishment, c.g. such things as ovaltine or a beaten egg in milk, should usually suffice, and solid medicine in the form of tabloids is permitted both by canon 858, §2, and by the indults granted to Ordinaries. But if permission to take solid food is desired, it seems that it will not easily be obtained. Cardinal Jorio mentions one case where such permission was granted, in 1918, for the purpose of enabling a person to fulfil the Easter precept. The sickness of this person made it impossible, for various reasons, to communicate until late in the afternoon.

* Cf. N.K.5., XXXVI, 1956, p. 581.
l Communion des Malades, p. 46.
1 Quoted in *Quetrions Liturgiques ft Paroissiales,* 1936, p. 41

i49.—Eucharistic Fast: Priests' Indults

On what conditions may a priest expect to obtain an mdnlt permitting, bim to celebrate Mass or receive Holy Communion after breaking the fast?

The law of canon 808 requiring a fast from midnight before celebrating Mass has its counterpart in canon 858, §1, with regard to receiving Holy Communion. Canon 858, §2, however, permits the reception of Holy Communion under certain conditions after taking liquid nourishment or medicine. The common law of the Code permits no similar exception for priests celebrating, though they may, of course, always communicate *more laicorum* in the circumstances of canon 858, §2. To celebrate Mass after breaking the fast, apart from the exceptional cases which the moralists have always noted, an induit is required.

(i) The *Holy Office,* 22 March, 1923,[1] in a letter addressed to Ordinaries, permitted a certain mitigation of the law in the case of priests celebrating Mass. The leading principle in this document is that the law may be relaxed solely for the spiritual good of the faithful and not for the private devotion or advantage of the priest: "Gravissimae demum huius legis relaxationem solum concedendam scias, quum spirituale fidelium bonum id exigat, non vero ob privatam ipsius sacerdotis devotionem aut utilitatem." The induit can be obtained from the Holy See by Ordinaries in favour of a priest who is unable strictly to observe the law, owing to infirmity or excessive fatigue (infirmae valetudinis causa, vcl propter nimium sacri ministerii laborem, aliasve rationabiles causas), as often as he is under the obligation of duplicating or of saying Mass at a late hour. Liquid nourishment alone is permitted and intoxicants are absolutely excluded. The normal procedure is for each case to be sent to the *Holy Office* by the Ordinary, but habitual faculties are sometimes given to Ordinaries, though we do not find these included in the usual *formula* of quinquennial faculties printed in the books, e.g. Bouscarcn, *Digest,* II, p. 5. In urgent cases an Ordinary may himself grant the permission personally, not through a vicar general, and afterwards acquaint the Holy See of the fact.

The same Congregation, 1 July, 1951, issued a more closely determined list of rules to be observed in applying for this induit. The document did not appear in the *Acta Apostolicae Sedis,* but it was printed in the journals, e.g. *Periodica,* 1932, p. 106. The points to be included in the petition are the age and ecclesiastical office of the priest, a medical certificate concerning his state of health, the hour of celebration and any other circumstances in the case of duplicating, and information concerning the possibility of getting another priest to do the work of the petitioner. In the case of secular clergy the petition must be sent through the Bishop together with his *votum* \ in the case of religious with care of souls, the intervention of the Superior General is also required. These *normae* do little more than make more precise the Instruction already issued in 1923.

But nn. i and 2 of these rules note an important distinction between "per modum potus ad vires physicas reficiendas" and "per modum verae medicinae ad morborum effectibus occurrendum", and this distinction makes

[1] *A.AS.,* XV, 1925, p. iji.

the conditions on which an induit may be obtained far less strict. For the taking of medicine is not limited to cases where a relaxation of the law is desirable for the spiritual good of the faithful, but may be permitted for the private advantage of the priest: "Cum ratio dispensationis per modum potus publicum sit bonum spirituale fidelium, ab iis tantummodo sacerdotibus impetrari potest, qui animaram curae sint addicti; dispensatio per modum verae medicinae, cum in commodum etiam privatum sit inducta, ceteris quoque sacerdotibus potest concedi; prima pro diebus tantum festivis vel fetialibus conceditur, in quibus missae sacrificium hora tardiore (post horam decimam) ratione ministerii est celebrandum; altera etiam pro omnibus diebus."

(ii) Priests may receive Holy Communion *more laicorum* as often as the conditions of canon 858, §2, are verified. In addition, those sick priests who belong to the "Association of Priest Adorers", commonly known amongst us as the "Priests' Eucharistic League", have been granted the privilege of communicating daily under the terms of this canon, not merely "semel aut bis in hebdomada" like the rest of the faithful. The text of the rescript granting this privilege, dated 29 March, 1926, may be seen in *Collationes Brugenses,* 1927, p. 14, n. 2; *Periodica,* 1927, p. 87; *Adoremus, xyi-J,* p. 25. It has not, we believe, been published in the *Acta Apostolicae Sedis.* The important clause in this rescript requires the permission of the Ordinary "praemonito Ordinario loci eiusque obtenta venia" which has been officially interpreted in the sense that the Ordinary cannot give this permission "semel pro semper ac modo generali", but he may subdelegate others to act in his name.[1]

150.—Eucharistic Fast—Night Workers

Is it at all possible to obtain permission for night workers to receive Holy Communion occasionally after breaking the fast?

A papal indult is necessary, in this and similar cases, which may be granted if a petition is sent to the diocesan chancellor explaining fully the reasons which seem to urge a relaxation of the law in some particular case.

The common law permits a relaxation in favour of the sick under certain conditions, upon which the confessor must give a prudent judgement, and induits are easily obtained permitting an extension of this law to nurses and others—persons not contemplated in canon 858, §2. Extension of the law may also be granted permitting non-fasting Communion more than twice a week, and during the war induits have been extended in all directions.

Ordinaries may obtain faculties from the Holy Sec enabling them to deal with applications without recourse each time to Rome. The Bishop of Münster, for example, was granted in 1938 by the *Congregation of the Sacraments* what is, we think, an unusual faculty, inasmuch as its use has no relation to the sick or those in attendance upon them. The text, as printed in *Theologisch-praktischbe Quarialschrift,* 1939, p. 139, is as follows:

Num. 2177/38.

Beatissime Pater,

Episcopus Monasterien. ad pedes S. V. provolutus, humiliter postulat

[1] *S.C. Sacram.,* 4 February, 1927; *Periodica,* 1927, p. 170.

facultatem permittendi operariis metallis addictis, qui operas fabriles in officina praebent per totum annum, nocturno tempore, ut semel in mense aliquid per modum potus sumere possint ante Sanctissimam Eucharisticam Communionem.

Ex Audientia SSmi dici 24. Maii 1938.

Sanctissimus Dominus Noster Pius Papa XI, audita relatione infrascripti Card. Praefecti Sacrae Congregationis de Sacramentis, attentis expositis, Episcopo Monastcrien. facultatem tribuere dignatus est juxta petita, ad triennium ut praefatis fidelibus veniam largiatur aliquid sumendi per m >dum potus semel in mense de consilio confessariorum, ante SSmam Eucharisticam Communionem, remoto quocumque scandalo et periculo admirationis. Contrariis quibuscumque non obstantibus.

sign. D. Card. Jorio Praef.

151.—Non-Fasting Evening Communion

An induit has been granted a person engaged in work of national defence during the war, by which Holy Communion may be received three hours after taking even solid nourishment. May this privilege be used, provided the other conditions are observed, during the afternoon or evening?

Canon 867, §4: Sacra communio iis tantum horis distribuatur, quibus Missae sacrificium offerri potest, nisi aliud rationabilis causa suadeat.

A similar induit which was granted to bishops and apostolic administrators in Russia, 25 November, 1929, expressly stated that it could be used in the afternoon or evening, provided the fast was observed for four hours.[1] In some respects it is wider than the induit to which the question refers, e.g. it includes permission to say Mass in the afternoon; in cth r respects it is mo e restricted, e.g. it can be used only on Sundays and Holy Days of obligation.

The answer to the above query is affirmative, wc think, for the following reasons. As explained in Q. 128, Holy Communion may be received fasting in the afternoon or evening for any reasonable cause, "qua causa extante, nil vetat quominus Eucharistia ministretur noctu vel sub vesperis, et quo citius ante auroram vel serius post meridiem distribuatur, eo vel maior quoque, uti patet, requiritur causa".[2] If it is found that a just cause exists for *fasting* Communion in the evening, there seems no reason why a person who, for other reasons, enjoys an induit for *non-fasting* Communion should not use it at that time. To be quite accurate, all that is required is a reason other than the reason for which the induit has been obtained, for the fasting law is quite distinct from the law which permits Holy Communion normally to be distributed only during those hours in which Mass may be said. The induit has been obtained for night-workers, to take one example, enabling

[1] *Documentation Catholique,* XXXIII, 1935, col. 1465: "Induit obtenu du Saint-Père par le président (de la Commission pontificale pour la Russie) accordant aux évêques et administrateurs en Russie de permettre, tant que dureront les conditions actuelles, le dimanche et les jours d'obligation, aux prêtres de célébrer et aux fidèles de communier l'après-midi ou le soir, pourvu qu'on observe un jeûne eucharistique d'au moins quarte heures à partir de midi, afin de faciliter aux ouvriers obligés de travailler ces jours-là l'accomplissement de leurs devoirs religieux."

[*] Cappello, *De Sacramentis,* I, §437·

them to communicate at the usual time even though the fast has not been observed. But the case must be far from uncommon where the worker cannot communicate in the morning, after he has left his work, but can easily do so in the afternoon or evening before beginning work.

§4. COMMUNION OF THE SICK

152.—Communion of the Sick: Rites

Can you describe briefly the chief points to be observed by the priest when taking Holy Communion to the sick? There seems to be considerable diversity of practice in this country.

Rituale Romanum, Tit. iv, cap. iv, n. 29: Quando, ex justa et rationabili causa, privatim sacra communio ad infirmos defertur, Sacerdos saltem stolam semper habeat propriis coopertam vestibus; in sacculo seu bursa pyxidem recondat, quam per funiculos collo appensam in sinu reponat; et nunquam solus procedat, sed uno saltem fideli, in defectu Clerici, associetur. Cum autem ad infirmi cubiculum pervenerit, Sacerdos superpelliccum quoque induat cum stola, si illud antea non induerit.

\\”c have taken this concise rubric from the Roman Ritual, since our *Ordo Administrandi* needs bringing up to date with the latest typical edition. It is assumed, firstly, that Holy Communion is taken privately to the sick, since from Tit. iv, cap. iv, n. 10 of the *Ordo . Administrandi* episcopal permission is necessary in this country for taking it publicly. Secondly, it is assumed that there is no special urgency warranting the non-observance of the ordinary rules.

(i) In taking the Blessed Sacrament from the tabernacle the priest should be vested in cassock, cotta and white stole, and two candles should be alight on the altar. A sacred particle is transferred from the ciborium to the small pyx with the accustomed genuflexions and ablution of the fingers.

If the sacred particle has already been transferred to the small pyx and left in the tabernacle, it is held by many that a cotta is not necessary when removing this pyx. The chief authority for this is O’Kanc-Fallon, *Rubrics of the Roman Ritual,* 1958, §775, but the author seems to assume that the Blessed Sacrament is being taken privately from the priest’s house and not from the church. In this country' it is normally taken from the church, and we think a cotta should always be worn whether the pyx is already prepared or not, as directed in n. 12; there seems no adequate reason for dispensing with this mark of reverence, the lack of which is likely to cause surprise to the faithful who may be in the church; and we read in n. 8: “Quando privatim sacra communio infirmis ministratur, reverentiae ac decentiae tanto Sacramento debitae sedulo consulatur.”

(ii) Going from the church to the house of the sick person, the priest will recite the *Miserere* and other psalms and canticles as directed in n. 13. He will wear the usual outdoor clerical attire, but a stole must be worn beneath the coat; some hold that there is a contrary custom in many places

which dispenses with the stole, but, relying again on n. 8, we cannot understand why this simple mark of reverence should be neglected.

Securing the attendance of one of the faithful to accompany the priest is not so easy, perhaps, but it is a service which many would be glad to give, and we think an effort should be made to observe the direction of this rubric.

It is customary in England for the burse containing the Blessed Sacrament to be hung round the neck by a cord and to be placed securely within a pocket of the coat or vest, a method which appears to be in accordance with n. 29: "per funiculos collo appensam in sinu reponat". But in η. 13 the direction is: "Quod si longius aut difficilius iter obeundum sit, et fortasse etiam equitandum, necesse erit vas, in quo Sacramentum defertur, bursa decenter ornata, et ad collum appensa, apte includere, et ita ad pectus alligare, atque obstringere, ut neque decidere, neque pyxide excuti Sacramentum queat." The observance of this rubric would mean that, in addition to the neck cord, the burse must be fastened to the breast by two cords attached to its base, in much the same way as the amice is fastened at Mass. The first edition of O'Kane's book contained a passage which sanctioned the use of a coat pocket instead of these cords, and the Congregation of Rites objected: "adamussim servetur quod praescribit Rubrica". Cf. *op. cit.*, p. 147, and the prefixed decree. We agree with Fr. Dunne that this was a private answer given to the author, and that the custom of using a pocket instead of the fastening cords is tacitly sanctioned by the bishops in this country and may be continued.[1]

(iii) Having entered the sick-room, the priest should vest in cassock, cotta and stole, and observe everything else directed by the rubrics. It may be noticed that it is no longer directed that the water used for purificating the fingers must be consumed by the sick person. Instead we read in n. 22: "Postea sacerdos abluit digitos in vase cum aqua parato, nihil dicens, et abstergit purificatorio; aqua vero ablutionis suo tempore mittitur in sacrarium, vel, si hoc desit, in ignem."

153.—Communion of the Sick: Vesture

At a certain convent, one of the nuns is a permanent invalid. Holy Communion is taken to her each day before Mass. The other nuns also receive Holy Communion before Mass. Is it permissible for the priest to vest completely, take Communion to the sick nun and then give it to the others? Or should he go out of the sacristy vested only in alb and stole, and after the Communion of the nuns return and vest for Mass? If the first manner of acting is considered right, should the blessing with the Blessed Sacrament be given in the sick-room when the vestments are black?

(i) The instructions of *S.R.C.*, permitting a priest to leave the altar during Mass to communicate a sick person, apply equally to Communion given immediately before by a priest fully vested for Mass. It is lawful if the priest docs not lose sight of the altar or, as some think, if his voice can be heard from the place where the sick person is assisting at Mass.' Inasmuch as, in these circumstances, the sick person is morally united to the

[1] *The Ritual Explained,* p. 56.
•Cf. Q. 154.

recipients at the altar, Communion is administered to the former with the usual *Corpus Domini,* etc., and without any of the ceremonies or prayers which accompany the rite of administering Communion to the sick in *Rituale Romanum,* Tit. iv, cap iv. When vested for Mass in black, the priest's blessing is not given at the end.[1]

(ii) If, however, the sick person is so far distant that moral unity, on the above criterion, is not preserved, Communion must be administered as a rite altogether separate from that accompanying its distribution at the altar before Mass. The priest simply follows the directions of the Ritual, as in any other case of administering to the sick in their rooms. He should be vested in surplice and white stole.

The question whether it is correct to give the accustomed Benediction vested in black does not arise: not in (i), since the person is communicating with the others; not in (ii), since the priest should not be wearing a black stole.

(iii) A slight variation from the rules given above in (i) might occur when Holy Communion is not distributed *immediately* before or after Mass, e.g. the priest has returned to the sacristy and someone requests Holy Communion. The alb may be retained instead of the surplice. Chasuble and maniple should be removed and the stole may be white or the colour of the day, except on All Souls' Day, when it may be either white or violet, preferably violet?

154.—Communion of the Sick: Blessing

A convent chaplain administering Holy Communion "extra Missam" proceeds immediately to the infirmary, and gives the blessing with the ciborium on his return. Should the blessing "Benedictio Dei Omnipotentis, etc." also be given? If so, when exactly is the correct time for giving it?

The solution of this doubt turns upon a decision whether the Communion of the sick in this case forms one rite with the Communion of the nuns in the oratory, or whether it must be considered a separate rite.

IM (i) On an analogy with the rules permitting the priest's departure from the altar during Mass to communicate a sick person, a similar departure is permissible when the rite is not Mass but administering Holy Communion outside Mass. Canon 868: "Sacerdoti celebranti non licet Eucharistiam intra Missam distribuere fidelibus adeo adstantibus ut ipse altare e conspectu amittat." In addition to this criterion of the altar being within sight, 5.R.C., 5522.2, sanctions departure from the altar when Holy Communion is to be given "in aliquibus cubiculis, ex quibus, etsi Altare non videatur, tamen vox Sacerdotis celebrantis auditur". This latter instruction is not mentioned amongst the sources of canon 868 and may, as many think, be abrogated. The principle, however, remains intact: the priest may leave the altar to communicate persons at a distance provided they may be considered as morally united with the recipients at the altar.

If, therefore, the infirmary in the above case is judged to be of this character, e.g. a tribune overlooking the chapel, the priest proceeds there,

[1] N. 5465.

after communicating the nuns at the altar rail, and on his return completes the rite as in *Rituale Romanum,* Tit. iv, cap. ii. The blessing is not with the ciborium but with the words *benedictio Dei Omnipotentis,* etc.

(ii) If, on the other hand, the infirmary is totally distinct from the chapel, it will be necessary to keep the rite of communicating the sick in Tit. iv, cap. iv, absolutely distinct from that in cap. ii. To avoid replacing the ciborium in the tabernacle, the sick should be visited first and the rite completed with the ciborium benediction, as in cap. iv. Removing the humeral veil, the priest communicates those in the chapel as in cap. ii, concluding with the blessing *benedictio Dei Omnipotentis,* etc.[1]

155.—Communicating the Sick in Church

Is it quite in order for a priest, after communicating the faithful at the altar rail, to descend into the body of the church in order to communicate an infirm person seated in the benches who is unable to approach the altar rail?

Canon 868: Sacerdoti celebranti non licet Eucharistiam intra Missam distribuere fidelibus adeo distantibus ut ipse altare e conspectu amittat.

We have not found this situation discussed by the writers, but in our view it is covered by the existing rules which regulate the distribution of Holy Communion during Mass to the sick in an infirmary contiguous to the sanctuary. Cf. *S.R.C.,* nn. 2672.1, 2885, 3322, 5448.8; O'Connell, *Celebration of Mass,* II, p. 164.

The criterion of canon 868 is that of n. 2672.1, namely that the sick person must be in a place within view of the altar, which is clearly verified in the above case. To be quite correct the Blessed Sacrament, if carried outside of the sanctuary, should be accompanied by two lights and the *ombrellino,* as directed in n. 3322, 1 and 2. But, in a case where the sick person is very near to the altar rail, in the front bench for example, it seems to us that this ceremonial could reasonably be omitted on the principle *pe minimis non curat lex.*

156.—Communicating Expectant Mothers

May a priest fake Holy Communion to an expectant mother shortly before the child is expected, if she finds it difficult or inconvenient to come to the church?

Holy Communion may be taken to expectant mothers as to any other person in a condition of sickness or infirmity. Apart from the danger of death, the obligation of doing so cannot easily be determined; both the canons and the ritual assume that there is an obligation to communicate the sick in their homes, but its existence in an individual case must be determined, as decided in Q. 160, by the circumstances of distance, the number of sick people in the parish, and the time at the priest's disposal; in other words, by deciding whether a request for the sacraments is reasonable. In view of all we do, or ought to do, to encourage motherhood, it is obviously desirable to communicate expectant mothers who arc unable to come to the church.

1 Cf. O'Connell, *Celebration of Masi,* Π, p. 164,

Induits, moreover, are easily obtainable permitting expectant mothers to communicate non-fasting in accordance with the conditions of canon 858, §2, a practice which supports the view that they are equivalent to sick persons.

157.—Plural Communion of the Sick

What is the correctprocedure to be observed when Holy Communion is administered to several sick persons in the same house or hospital, but occupying different rooms ?

Up to 9 January, 1929, it had been necessary to repeat the whole rite in each room. On this date the *Congregation of Rites'* issued the following instruction, which will, no doubt, be incorporated in the next typical edition of the Ritual:

Quo breviori et faciliori ratione sacra Communio pluribus infirmis ministrari valeat, Sacra Rituum Congregatio sequentem instructionem probari posse censuit; nimirum:

Quando sacra Communio distribuitur pluribus infirmis, qui in eadem domo, vel in eodem hospitali, sed in distinctis cubiculis degant, Sacerdos vel Diaconus ministrans, in primo tantum cubiculo recitet plurali numero omnes preces ante infirmorum Communionem dicendas juxta Rituale Romanum, Tit. iv, cap. 4; in aliis autem cubiculis dicat tantummodo preces: *Misereatur tui . . . Indulgentiam . . . Ecce Agnus Dei ...»* semel *Domine non stem dignus . . . Accipe frater (soror) . . .* vel *Corpus Domini nostri Jesu Christi . . .*; et in ultimo cubiculo addat versum: *Dominus vobiscum,* cum suo responsorio et cum sequente oratione plurali numero dicenda: *Domine sancte . . .*, ibique, si qua particula consecrata superfuerit, benedictionem eucharisticam impertiatur, ac tandem reliquas preces praescriptas in Ecclesia de more persolvat.

Facta postmodum de his omnibus Sanctissimo Domino nostro Pio Papae XI per infrascrintum Cardinalem Sacrae Rituum Congregationi Pro Praefectum relatione, Sanctitas Sua praefatam instructionem ratam habuit et confirmavit; eamque pro opportunitate adhibendam benigne concessit. Contrariis non obstantibus quibuscumque.

A table with a corporal and two lighted candles will be required in each room; also a purificating vessel, unless there is a server who can carry it when accompanying the priest. A humeral veil will be used on the journey between the rooms.

158.—Communicating Others in the House

May a priest, on the occasion of taking Holy Communion to a sick person, also communicate other persons in the household who are prevented, owing to the distance from a church and other reasons, from communicating in the normal way ?

Canon 869: Sacra communio distribui potest ubicunque Missam celebrare licet, etiam in oratorio privato, nisi loci Ordinarius, iustis de causis, in casibus particularibus id prohibuerit.

Canon 822, §4: Loci Ordinarius aut, si agatur de domo religionis

l *A.A.S.,* XXI. 1929. P· 6?.

exemptae, Superior maior, licentiam celebrandi extra ecclesiam et oratorium . . . nunquam autem in cubiculo, concedere potest iusta tantum ac rationabili causa, in aliquo extraordinario casu et per modum actus.

S.C. Sacram., 5 January, 1928: An fideles in montanis pagis habitantes, quoties ad infirmos Sacra Eucharistia deferatur, possint Sacra Synaxi refici in loco sacro, vel etiam, cum agatur de re tam sacra, in loco decenti et honesto qui in itinere exstet, non valentes ea die ecclesiam petere ? R«/>. Affirmative, ad normam can. 869, iuncto canone 822, §4, seu dummodo Ordinarius loci id concedat ad normam cit. praescriptionis, scilicet pro singulis casibus et per modum actus.

(i) The decree of the Congregation, which merely applies the existing law, was accompanied by the official annotations of the secretary to the Congregation, and the law is quite plain. One has simply to decide whether Mass may lawfully be said in the place where it is proposed to give Holy Communion to persons who arc not sick. The Ordinary may permit Mass to be said in any suitable place except a bedroom, and it is therefore necessary to have the permission of the Ordinary to distribute Holy Communion in such places. A supplementary reply of the Congregation makes it clear that, if the other conditions are observed, the house of the sick person may be considered a suitable place.

(ii) The *official* annotations to the above decree point out that, from canon 199, §i> tbe Ordinary is permitted to delegate the powers he possesses in this matter to other priests, provided he judges that the delegation will not be abused, and provided he specifies what constitutes a just or reasonable cause and what cases are to be considered as coming within the terms of the delegation. Therefore, a priest to whom it seems expedient often to communicate people in these circumstances may apply to his Ordinary' for a delegated power to decide on its lawfulness in each case. The delegation may be granted or refused, as the Ordinary sees fit, and if it is refused it will be necessary for the priest to apply on each single occasion.

(iii) The *unofficial* commentators go further and discuss the situation which arises when there is no time to have recourse to the Ordinary. Applying the principle of *epikeia,* they have no difficulty in permitting Holy Communion to be given within the terms of the above reply, namely] "in loco decenti et honesto", even without permission from the Ordinary. But whether this friendly principle may be applied to distributing Holy Communion in a bedroom to those who are not sick is by no means so clear. For the rule, as explained by the Holy Sec, restricts the practice to places where Mass may be said, and the law of canon 822, §4, denies even to the Ordinary the power to permit Mass in a bedroom.

Nevertheless, some writers tolerate the application of *epikeia* to communicating another person in the sick-room itself.[1] The commonest case would be that of the nurse tending the sick person, of whom Cardinal Jorio writes: "Mais dans le cas où l'infirmière ne pourrait absolument pas quitter son malade pour aller communier à l'église et se trouverait ainsi obligée de se priver de la communion, il nous semble qu'on pourrait admettre une interprétation bénigne du droit et que l'infirmière en question pourrait communier dans la chambre de son malade"?

[1] *Periodica,* 1928, p. 127; Tummolo-Iorio, *l'beol. Moralis,* II, §509 bis.
[*] *Communion des Malades,* p. 41.

159.—Communion: Non-Catholic Servers

In a non-Catholic institution, are members of the stiff permitled to accompany the Blessed Sacrament with lights when I lo/y Communion is brought to the sick ?

When it is a question of a Catholic participating in the religious rites of non-Catholics, doubts are easily solved, if the participation proposed is an active part in a purely religious rite, it is intrinsically wrong, as being an implied external denial of the Catholic faith, and cannot be permitted for any reason.

The participation of heretics in Catholic rites is on a different footing. Speaking generally, we desire them to be present at Catholic functions in order to further their conversion. But they have to be refused the sacraments, which are given only to those who are in communion with the Church. Nevertheless, in the hour of death, it is now the common teaching that they may *servatis servandis* receive absolution and Extreme Unction. The discipline in this respect has, in fact, relaxed considerably. For example, from canon 1149 they may receive sacramentals, a practice which was formerly forbidden by the *Hol)' Office, 22* June, 1859.

The guiding principle, which can never be changed, is that scandal must be avoided in permitting heretics actively to communicate with Catholics in religious rites; the scandal is in encouraging the belief amongst heretics and amongst ill-instructed Catholics that it is a matter of little consequence whether one is a member of the visible Church or not. The matter has a special application to permitting heretics to serve the priest at sacred functions, since this is an office belonging properly to clerics and is only conceded to Catholic laity as a privilege.

Therefore the *Holy Offce,* 20 November, 1850, decided that heretics could not be permitted to minister to the priest celebrating the divine mysteries, nor to carry' torches and lights. We think that this direction should apply to the above query and that non-Catholics should not be permitted to serve the priest in the two instances mentioned. But they should be encouraged to attend the rites in the same way as they are encouraged to join the congregation at any Catholic function.

160.—Communion of the Sick: Frequency

What is the teaching and practice of the Church in regard to the frequency of administering Holy Communion in their homes to invalids who are not in any danger of death ?

In this reply we may eliminate not only those in danger of death, but also religious and others living in community, for whom explicit arrangements arc usually made between the chaplain and the superior.

The general principle is that a priest is bound, either in justice or in charity, to administer the sacraments to those who seek them reasonably. It is a question of defining what is reasonable, and the manualists do not attempt to determine the number of times, since what is reasonable in one case may be unreasonable in another, owing to the scarcity of priests or the

distance to be travelled. If it is asked how often Holy Communion *may* be taken to a sick person, the answer is that it may be taken daily. Frequent or even daily Communion, recommended to all the faithful, is to be recommended *a fortiori* to sick people whose need of divine assistance is greater by reason of their sickness.[1]

If it is asked how often a priest is *bound* to take Holy Communion to the sick, the law is too flexible for a mathematical definition. Canon 468: "Sedula cura et effusa caritate debet parochus aegrotos in sua paroecia, maxime vero morti proximos, adiuvare, eos sollicite Sacramentis reficiendo eorumque animas Deo commendando." The rubrics of the *Rituale Romanum,* Tit. v., cap. iv., *De Visitatione et cura infirmorum,* are in similar general terms. Owing to the difficulty, if not impossibility, of determining the obligation more closely, we do not know of any particular laws which define the frequency of this obligation. They stress the obligations already existing in the common law, e.g.: IV *Malines.* 1920, n. 199: "Parochi et sacerdotes curam animarum habentes sciant se praeclarum caritatis—immo justitiae munus adimplere, quum sanctissimam Eucharistiam ad infirmos deferunt." *Liverpool Synod,* 1954, η. 122: "Hortamur sacerdotes ut inhaereant optimae illi consuetudini iam in hac dioecesi inveteratae, ut infirmis occasiones omnino crebras SS. Eucharistiam sumendi praebeant."

We are of the opinion that *monthly* Communion may be taken as a useful normal rule. It is an opinion deduced, by analogy, from canon 858, §2, which permits the strict rule of fasting to be relaxed in the case of sick people who have been lying ill for a month. Their need is considered sufficiently urgent, after being deprived of Holy Communion for a month, for the serious law of fasting to be relaxed. It would therefore seem that a priest should take them Holy Communion after they have been ill for a month, and subsequently at monthly intervals, even at the cost of some inconvenience to himself. It is a rule which, from the nature of the case, cannot be taken as absolute but as relative. A priest might reasonably be expected to go more often to houses near the church, less often to those at a distance.

161.—Obligation of Viaticum

Is the obligation of receiving Holy Communion at the hour of death, or tn danger of death from any cause, a positive precept imposing a moral obligation on Catholics? If so, where is this teaching to be found in the English Catechism of Christian Doctrine? May a dying Catholic refuse to go to confession, though willing to receive Holy Communion and Extreme Unction?

The command of Christ in John vi, 54, is considered generally (probabilissime) to be binding in danger of death. It is certainly a moral obligation on all Catholics from canon 864, §r: "In periculo mortis, quavis ex causa procedat, fideles sacrae communionis recipiendae praecepto tenentur." It is mentioned explicitly in some larger catechisms, e.g. Gasparri, Q. 410, but not in our "Penny" catechism. It is not possible to formulate every grave law in small catechisms, but it is contained implicitly in such questions as n. 228, which teaches the obligation of obeying the Church.

1 Jorio, *Communion des Malades,* 1933, p. 36.

The obligation of confession docs not arise unless the person in danger of death is conscious of mortal sin. That the obligation arises *ex iure divino* is implied in canon 6, Sess. XXIV of the Council of Trent; that it binds in danger of death is certain because, otherwise, there is a risk of dying without observing the law, formulated in canon 901 of the Code, which requires all post-baptismal mortal sins to be submitted directly to the power of the keys. Therefore, for a person conscious of mortal sin, there exists *perse* an obligation *ex iure divino* to go to confession when in danger of death. *Per accidens* there is also an obligation arising, in such circumstances, from the law of receiving Holy Communion. Very likely *ex iure divino,* from I Cor. xi, 28, and certainly *ex iure ecclesiastico* from canon 856, confession is imposed before Holy Communion on every person conscious of mortal sin.

Refusal to confess might, however, indicate that a person receiving the last sacraments is not conscious of mortal sin, in which case the priest cannot insist on confession.

162.—Viaticum Before Operations

Could it not be said that, generally speaking, ihe danger which justifies a serious operation justifies Extreme Unction, in which case the patient should be anointed and receive Holy Communion by way of Viaticum ?

With regard to Extreme Unction it is necessary to examine the patient's condition at the moment of its reception. Usually, if a serious operation is pending, the patient is seriously ill and should be anointed. If a person is sufficiently ill to be anointed, it follows that Holy Communion *per modum Viatici* may also be administered to him not fasting.

But it might easily happen that there is no danger of death at the moment from sickness, and that a serious operation is being voluntarily accepted in order to prevent some permanent disability. After the operation the patient might well be in sufficient danger to receive Extreme Unction, but before the operation he is, relatively speaking, in good health. In this case Extreme Unction cannot validly be received.

May he receive Holy Communion not fasting *per modum Viatici* owing to the danger of the impending operation ? The solution of the doubt depends entirely on forming the judgement that the operation is a serious one from which death may, perhaps, result. If an affirmative judgement car. be given it follows that Holy Communion may be received not fasting. Dr. V. Couckc, writing in *Collationes Brugenses,* 1934, p. 383, admirably expresses the point at issue: "Non debet jejunium servare: (<2) propter *periculum mortis,* qui Viaticum recipit, etiam ex devotione tantum et, quod advertere velis, etiam si hac occasione extremam unctionem non recipit, aut recipere nondum potest. Non jejunus communicare quis potest, sive periculum mortis ab intrinseco proveniat (ratione morbi) et quidem quousque illud periculum manet, sive ab extrinseco oriatur, dummodo probabile sit *ultimam* sumi communionem, puta propter proelium instans, aut urgentem operationem chirurgicam periculosam, aut propter instantem exccutioncm capitalem."

There will always be a margin of doubt concerning the impending danger of death, and it is to be resolved in favour of the patient, according to the teaching of all the writers: "Periculum mortis incipit, ubi gravis ratio adest,

infirmum moriturum cssc; non sufficit mera possibilitas, quae semper adest, sed nee requiritur moralis certitudo. Quamdiu hoc periculum durat, manet exemptus. Si dubium est, utrum infirmus sit in probabili mortis periculo, utrum morbus revera letalis sit necne, Viaticum nihilominus administrare potest non jejuno, tum quia obligatione jejunii non constat, tum quia recte praesumitur ecclesiam in hoc casu favere aegroto, ne exponatur periculo decedendi sine Viatico."[1] The solution is clear enough in cases of danger *ab intrinseco* and the same applies to danger *ab extrinseco.*

Is Viaticum permissible if the person has aready communicated that day ‹

Canon 864, §1 : In periculo mortis, quavis ex causa procedat, fideles aacrae communionis recipiendae praecepto tenentur.

§2. Etiamsi eadem die sacra communione fuerint refecti, valde ramen suadendum, ut in vitae discrimen adducti denuo communicent.

That there is no obligation of receiving Holy Communion again as Viaticum is clear from this canon, although previous to the Code many followed St. Alphonsus[2] in teaching that there was an obligation at least in those cases where the danger of death arose *ab extrinseco.* The precept of receiving Viaticum is fulfilled by the previous Communion, even though the person was not conscious of any danger. The force of the words "valde suadendum" cannot, therefore, refer to persuading the person to fulfil this precept again; their meaning must refer to something other than the fulfilment of a precept. The situation is that the person who has already communicated is made aware, in the course of the day, that he is in danger, and in this condition the grskce and solace of the sacrament would be of great assistance in preparing for the possibility of death. It is right that he should be persuaded to neglect nothing that the Church can offer. It might be said that the danger existed at the time of the first reception of Holy Communion, in the morning, and that it was, as a matter of fact, Viaticum which should not be repeated on the same day. But the person was not conscious of the danger at that time and, although the precept is fulfilled, a second reception is to be advised.

163.—Viaticum: Parochial Right

Is it a correct interpretation of the law that any priest may take Holy Communion to the sick "per modum Viatici" provided that it has been administered once by the parish priest or bis delegate ?

Canon 462.3: Functiones parocho reservatae sunt, nisi aliud ture caveatur: . . . Sanctissimam Eucharistiam publice aut privatim tanquam Viaticum ad infirmos deferre atque in periculo mortis constitutos extrema unctione roborare, salvo praescripto can. 597, n. 3, 514, 848, §z, 938, §2.

Canon 850: Sacram communionem per modum Viatici sive publice sive privatim ad infirmos deferre, pertinet ad parochum ad normam can. 848, salvo praescripto 397, n. 3 et can. 514, §§, 1-3.

[1] Noldin, *Tbeot. Moralis,* III, §ij).

[*] *Tbtol. Moralis,* VI, n. j8j.

Canon 864, §3: Perdurante mortis periculo, sanctum Viaticum, secundum prudens confessarii consilium, pluries, distinctis diebus, administrari et licet et debet.

The exceptions mentioned in canons 462 and 850 refer to the rights of a Chapter to administer Viaticum to the bishop, the rights of superiors of clerical religious Institutes in regard to their subjects, and the rights of the ordinary confessor in the case of nuns.

Almost universally the authors interpret this law by drawing a distinction between *Viaticum stricte dictum,* by which is meant the observance of the divine and ecclesiastical law of receiving the Holy Eucharist when in danger of death, and *Viaticum latius dictum,* by which is meant the repeated reception in the same illness as provided for in canon 864, §5. The former, it is maintained, is a parochial right, but not the latter. The reasons given for this interpretation are, firstly, the custom of most places by which any priest takes Viaticum to the sick in the latter sense; secondly, the terms of canon 864, §5, which allow Viaticum to be received repeatedly on the prudent advice of a simple confessor who need not be the parish priest; and, thirdly, the desire of the Church that the faithful, including the sick, should communicate often, which argues that it is not intended to make this more difficult by making the act a parochial right. This is the interpretation given by most of the manualists we have consulted, both regular and secular: Priimmer, *Tbeol. Moralis,* III, §219; Tummolo-Iorio, *Theol. Moralis,* II, §107; Claeys-Bouuaert, *Jus Canonicum,* II, §106.

In particular, Fanfani, who in an earlier edition of *De lure Parochorum* conceded the point with some hesitation, is quite explicit in the current 1936 edition, §300: "Intelligendum est autem de Viatico *prima vice* ministrandum; non autem de Communione quae, perdurante periculo mortis, pluries *ex devotione* saepe saepius ministratur infirmo etiam non ieiuno. Patet ex ipso can. 864, §3, ubi iudicium de opportunitate S. Viaticum iterandi, non ad Parochum sed *ad Confessarium* remittatur. Igitur, post Viaticum prima vice receptum, quilibet sacerdos potest deferre privatim S. Communionem infirmo, etiam per modum Viatici."

§5. THE PASCHAL PRECEPT

164.—Time of Paschal Precept

Can it be maintained that the pre-Code time, namely Ash Wednesday to Low Sunday, is for us in England the lawful period for fulfilling the Easter precept?

Canon 859, §2: Paschalis communio fiat a dominica Palmarum ad dominicam in albis; sed locorum Ordinariis fas est, si ita personarum ac locorum adiuncta exigant, hoc tempus etiam pro omnibus suis fidelibus anticipare, non tamen ante quartam diem dominicam Quadragesimae, vel prorogare, non tamen ultra festum Sanctissimae Trinitatis.

I. *Westm.,* Appendix XΓΠ: Attenta paucitate Missionariorum per Angliam, cumque Hiberni, quorum plures in Anglia degunt, extensionem temporis ad Paschale preceptum adimplendum obtinuerint, Archicpiscopus et Episcopi

Concilii Provincialis Angliac petunt pro toto Angliac extensionem temporis Paschalis a fcria IVa Cinerum ad Dominicam in Albis. . . . Pius PP. IX benigne annuit, contrariis quibuscumque, etc. 14 Maii, 1853.

Canon 4: lura aliis quaesita, itemque privilegia atque indulta quae, ab Apostolica Sede ad haec usque tempora personis sive physicis sive moralibus concessa, in usu adhuc sunt nec revocata, integra manent, nisi huius Codicis canonibus expresse revocentur.

The induit obtained by the English bishops in 1853 was still decidedly in use at the time of the promulgation of the Code, and since it is not expressly revoked by canon 859 it seems inevitably to follow that it is still in force. The only reason for doubting whether this is a correct conclusion is that, in some dioceses, the Lenten induit promulgates the new reckoning according to the terms of canon 859, §2, and Ordinaries extend the time either to Trinity Sunday or to a lesser extent as each judges expedient. At present, somewhat to the confusion of the laity, the time for fulfilling the precept differs in various parts of England.

Had no change been introduced in 1919, the induit granted in 1855 would still have been operative, beyond all doubt. As the matter stands there is an element of doubt, since it might be held that some bishops have renounced the induit obtained in 1855 and reverted to the common law. But, on the usual principles of interpreting laws, we think it could rightly be maintained that it is open to the faithful to make their Easter Communion from Ash Wednesday, relying on the induit of 1853, or to extend it to Trinity Sunday or other day, relying on whatever prorogation is granted by the local Ordinary using the powers of canon 859, §2.

This view is confirmed from the similar situation in the United States which enjoyed, since 1830, an induit extending the paschal period from the first Sunday in Lent till Trinity Sunday.[4] Woywod and other writers make no mention of this induit and refer to the common law of canon S59 as being operative in America.[2] But recently the induit appears to have been resurrected, as it were, and canonists of the greatest authority declare, without any hesitation, that the induit of 1850 is still in force.[3]

In practice there is, of course, no difficulty. It is for the Ordinary of each diocese to determine the local extension for all the faithful within his jurisdiction.

165.—Easter Communion in Parish Church

What rightt if anyy has a parish priest to insist that his parishioners should either communicate at Jiaster in the parish church or inform him if they have made their Easter Communion elsewhere? Onr current "Ordo Administrandi" directs the priest to send non-parishioners to their own parish priest for Iloly Communion on Easter Sunday. Is this an obligation?

Canon 859, §3, and *Rituale Romanum,* Tit. iv, cap. iii, n. 2: Suadendum

5 Cf. Kcnrick, *Tbcol. Moralis* (i860) I, p. 132.

1 Woywod. *A Practical Commentary* (1952) I, p. 413.

* Bcstc, *Introductio in Codicem* (1938) p. 495; Bouscaren, *Digest,* II, p. 89; both refer to *Ecclesiastical Review,* XCVI, 1937, p. 78; it appears that a private reply has been received from Rome supporting the induit of 1830.

fidelibus ut huic praecepto satisfaciant in sua quisque paroecia; et qui in aliena paroecia satisfecerint, curent proprium parochum de adimpleto praecepto certiorem facere.

The matter will best be understood by considering separately (i) the duty of communicating at Easter in the parish church; (ii) the duty of informing the parish priest; (iii) the rubric in our *Ordo Administrandi.*

(i) There is no longer any law requiring the faithful to communicate at Easter at the hands of their own parish priest, and even when the law existed grave inconvenience excused one, of course, from its observance. The obligation, which used to be quite strict, has gradually become relaxed, so that what was once a law is now a counsel—"suadendum est fidelibus"; good Catholics anxious to obey the guidance of the Church in everything will gladly respond. The canon clearly refers to the parish, not to the parish church, it being considered, no doubt, that the purpose of the law is thereby secured, and that the parish priest, as well as the faithful in general, can easily discover who have made their Easter duties, if Communion is received publicly within the parish. As a pendant to the modern relaxation of the older law, we find the Holy See deciding in 1912 that the prohibition against distribution of Holy Communion on Easter Sunday in the non-parochial churches of regulars is no longer in force.[1]

(ii) There arc canonists of repute[2] who think that it is also merely a counsel to inform the parish priest when the Easter Communion has been made outside the parish. Others hold that it is a precept, though clearly not binding *sub gravi,*[2] and this seems to us the correct interpretation, since the canon docs not use the word "suadendum", but "curent", a word which in some canons means rather more than a counsel. r\ parish priest is, therefore, well within his rights in telling the people that he should be informed if any of them make their Easter duties outside the parish.

(iii) *Ordo Administrandi,* Tit. iv, cap. iii, n. 3: "Dabit quoque operam Parochus, quoad cius fieri potest, ut in ipso die sanctissimo Paschae communicent (parochiani); quo die ipse per se, nisi legitime impediatur, parochiae suae fidelibus Sacramentum ministrabit. Alienae vero parochiae fideles ad proprium Parochum remittet, praeter peregrinos et advenas, et qui certum domicilium non habent, quibus ipse sacram praebebit communionem, si ad illam accesserint rite parati: vel ubi est ea consuetudo, eos ad cathedralis Ecclesiae Parochum remittet."

We think that the text dates from times when the old law was in full possession and that it will, no doubt, be modified when a new edition appears. In the meantime the common law of the Code must take precedence over the rubrics of local rituals which are at variance with it. As we have shown above, the faithful break no law in communicating outside their parishes at Easter, nor would the parish priest be justified in refusing Easter Communion to those who belong to another parish.

[1] *S.C. Cone.,* 28 November, 1912; *Fontes,* n. 4363.
[2] Cappello, *De Sacramentis,* I, §475.5.
[3] \ ermccrsch-Creuscn, *Epitome,* II, §128.

166.—The Sick and Paschal Precept

Are those who are unable to receive Holy Cornmunion in church, owing to sickness or old age, though not in danger of death, bound, from canon 859, § 1, *to be given an opportunity to communicate at home ?*

Canon 859, §1 : Omnis utriusquc sexus fidelis . . . nisi forte de consilio proprii sacerdotis, ob aliquam rationabilem causam, ad tempus ab cius perceptione duxerit abstinendum.

Canon 468, §1 : Sedula cura et effusa caritate debet parochus aegrotos in sua paroecia, maxime vero morti proximos, adiuvare, eos sollicite Sacramentis reficiendo eorumque animas Deo commendando.

Rituale Romanum, Tit. v, cap. iv, n. 1: . . . non cxpectabit ut ad cum vocetur, sed ultro ad illum (aegrotum) accedat. . . .

(i) In principle it must be held, we think, that, the obligation of canon s59› being grave on the part of the faithful, there is a proportionately grave obligation on the part of the priest to facilitate its observance. But, like any other positive law, one is excused by grave inconvenience, and the canon itself permits the priest to defer the reception of Holy Communion for any reasonable cause: it is an application of the general rule that one is bound to administer the sacraments to those who seek them reasonably. By "proprius sacerdos" in this context is meant any priest with confessional jurisdiction over the person. Cf. Fanfani, *De lure Parochorum,* §285.

(ii) The conscience of the priest must be his guide in individual cases, unless there is some local law which makes his obligation more explicit. Thus, in the case of the aged or of the sick who arc permanently unable to come to the church, we can conceive of no adequate reason for not offering them the opportunity of annual Communion; at the most, the priest might, for just reasons, defer the time beyond the period of the Paschal precept.

For those who arc incapacitated for a short time, which happens to be the period of the Paschal precept, the faculty of canon 859, §1, may be used: if there exists a reasonable cause for not communicating them at home or in the hospital, they should be told that they are bound to observe the precept before the next Easter period begins; for once the paschal time has elapsed there is no strict obligation of the positive law to communicate *quamprimum.*

In other cases the priest may be willing and anxious to do his part towards the sick, but he doubts their dispositions, since they have habitually missed the Easter duty when well. He should, in our opinion, do what is possible to secure proper dispositions, for the period of illness is ven,' frequently an occasion of true repentance; if he is unsuccessful, the faculty of canon 859, §i, may be used.

167.—Paschal Precept and Sanctions

A curate, on opening the notice-book shortly after Easter, finds the following, written by the P.P. for reading to the people: "The time for Infilling your Laster duties is now past. If there are any who have failed in this obligation, they are out of tbe Church, and all we can do is to pray for tbeml Synodal law in the diocese

concerned orders that all notices written by the P.P. are to be read out in full to the congregation. The curate in question carne across the notice very shortly before Mass was due to begin·, it had already been read, with emphasis, at two previous Masses. It was impossible to consult the P.P., who lived at a distance from the church. What was the curate's obligation in the matter? Was be bound to correct the false impression given ?

The sanctions which used to be attached to this precept have long since been abolished; nor does the neglect of Easter Communion necessarily place the delinquent in the category of public sinners, unless it is qualified by some other aggravating circumstance.

The curate is in the awkward position of having to choose between disobeying a Synodal law or making a declaration which is false, since these people are not "out of the Church". In all such cases of perplexed conscience one should choose the lesser evil, which, in this case, is to disobey the Synodal law by omitting to give out the notice. But, in our view, he has no right or obligation to contradict publicly the parish priest's erroneous opinion. lie should discuss the matter with him privately, express regret that he docs not sec his way to give out the notice, and leave it to the parish priest to have recourse to the Ordinary if he sees fit.

168.—Dispensing From Paschal Precept

May a parish priest, for proper reasons, dispense the faithful from observing this precept during the appointed time, that is to say by deciding that the Piaster Communion may be received at some time after Trinity Sunday, or after whatever day is determined by local law ?

Canon 859, §i: Omnis utriusque sexus fidelis . . . nisi forte de consilio proprii sacerdotis, ob aliquam rationabilem causam, ad tempus ab cius perceptione duxerit abstinendum.

The canon repeats the words of the Fourth Latcran Council. Clearly, if reception during the stated times is morally impossible, owing to illness or distance from a church, no special permission or dispensation is required. The time having elapsed, anyone who has not observed the precept is bound to do so within the year, that is to say before next Easter; for there are really two laws: annual reception and Easter reception. If the paschal time has elapsed, there is no strict obligation of the positive law to communicate *quamprimum.*[1]

Actually it is not easy to envisage examples or reasonable causes to which the words of the above canon would apply. An instance might be that of a sick or convalescent person, unwilling to fast though able to do so; or the case of a person not having the proper dispositions for communicating. By *proprius sacerdos* in this context is meant not merely the parish priest but any priest with confessional jurisdiction over the person in question. "Rcctc intclligendum est de omni sacerdote qui ordinariam vel delegatam jurisdictionem habeat in illum fidelem pro sacramcntali foro; unde non tantum de proprio parocho vel Ordinario, sed etiam de confessario."[2]

[1] Cf. Clacys-Bouuacrt, *Jur Canonicum,* II, §114.
[2] Faniani, *De lure Parochorum,* §28 **j**.

V. HOLY EUCHARIST: EXPOSITION

169.—Origins of Benediction

IP7w/ *proof is there that the origin of Benediction is io be sought in the practice of devout people during the Middle Ages, who were accustomed to sing at Our Lady's statue in the evening and afterwards to visit the Blessed Sacrament? ' .VL;· it be held that the coalescing of these two practices has restdled in our rite of Benediction? Is it of obligation to sing the Litany of Our Lady or some other anthem in her honour at the present day?*

There is some dispute about the origins of Benediction, many putting the stress on the evening devotions to Our Lady, others bidding that Exposition and Benediction were already in possession. It is agreed that the two have coalesced.

(i) Fr. Thurston, S.J., following the conclusions of the Bollandist De Buck, dealt with the question in *The Month,* XCVII, 1901, p. 587, and XCV1II, 1901, pp. 5 8,186, 264. It was the subject of an interesting paper read by him at the London Eucharistic Congress, 1908, and printed in the *Ltport* of the Congress, p. 452. Later, in *The Montb,CXXyW,* 1916, p. 500, during the course of an historical study of the *Salve Regina,* his conclusions were again summarized: "The main interest of this *Salve Regina* service, already several years ago discussed in these pages, is the fact that it has undoubtedly given us the evening Benediction of the Blessed Sacrament which is so familiar at the present day." Examples of this development are cited, particularly in Belgium and France, and the common French name for this service, "salut", is itself a strong argument for connecting Benediction with the *Salve.* Another link with the past is the custom still existing in some colleges of singing Our Lady's antiphon before Benediction on Saturday evening, a practice brought from abroad when the colleges returned to England at the end of the eighteenth century. This explanation of the origin of Benediction is adopted by many, e.g. Canon Van de Velde in *Questions Liturgiques et Paroissiales,* 1925, p. 289, and it is the usual one found in the text-books, e.g. Lefebvre, *Catholic Liturgy,* p. 74.

(ii) More recent writers, however, arc inclined to seek the origin of the rite in specifically Eucharistic devotions, and in the course of two well-documented articles on *The Development of Devotion to the Blessed Sacrament,* contributed by Fr. J. Murphy, S.J., to *The Cletgy Review,* XI, 1956, pp. 353, 449, this opinion is reckoned to be more probably correct: "Others say that although these Marian devotions were the universal practice, the addition of a blessing with the Blessed Sacrament was the custom only where exposition during the Office closing with Benediction was already in practice. . . . Since Benediction is specifically a Eucharistic service, such a view seems the more probable."

Fr. P. Browe, S.J., seems to have been the first to expound this theory', in *Die Verehrung der Eucharistie im Mittelalter,* Munich, 1953, and in some earlier contributions to periodical literature, notably in "Der Segen mit

Rcliquien dcr Patène une! Eucharistie", *Ephemerides Eilurgica,* 1931, p. 583. *He* shows that the mediaeval custom of blessing the faithful with relies, for example, on the occasion of a procession, was imitated, when the feast and procession of Corpus Christi were introduced, by blessing them with the sacred Most; when Expositions took place on days other than Corpus Christi the same custom of blessing the people continued; there are several examples of this practice in France, Spain and Italy during the sixteenth century', and in Germany as early as the fourteenth. The practice of Exposition was itself prepared by the popular desire to look upon the Host, and by the many prayers expressly composed for use whilst so doing. In fact, the elevation of the Host at Mass is due to this popular demand rather than, as used to be thought, to ecclesiastical authority, which was supposed to have ordered the rite as a protest against the heresy of Bcrengarius.

(iii) A writer in *Ephemerides Uturgica,* 1927, p. 125, mentions the view, held by some liturgists, that the rite of Benediction was, perhaps, introduced by St. Antony Maria Zaccaria. He certainly introduced the "Forty Hours" at Vicenza, as recorded in Lectio vi of his Office, 5 July, but Benediction existed long before his time. The truth seems to be that it was a popular and spontaneous growth in various parts of Europe, deriving its essential characteristics from the Corpus Christi rites. In those places, especially in France, where the custom of evening devotions or stations in honour of Our Lady existed, the rite of Exposition and Benediction became detached from the Mass and attached to the hour when Marial devotions took place. A good summary of the whole question may be seen in two contributions by Dr. Dumoutet in *Revue Apologiti'que*, LII, 1931, pp. 409 and 529. Unfortunately, owing to the war, we have not been able to consult recent fascicules of Cabrol's *Dictionnaire d'Archéologie·*. there will, no doubt, be a fresh examination of the subject s.v. "Salut".

(iv) Except for the portion of the rite from T*anturn Ergo* to the prayer *Deus Qui* no very explicit directions exist in the common law as to what may or may not be sung during this rite. The Roman custom is for the priest to expose the Blessed Sacrament and to reappear vested in a cope at the *Tantum Ergo,* the period of Exposition being used for any authorized popular chants or devotions. There is certainly nothing in the common law requiring a litany or anthem of Our Lady always to be sung or recited, though the practice is extremely fitting for traditional reasons. Our *Riftis Servandus* similarly contains no direction in this sense, but local Ordinaries sometimes require a prayer or anthem in honour of Our Lady on Sundays and Holidays, as in the *Middlesbrough Decrees,* 1953, n. 295.

170.—Benediction: Sign of the Cross

In giving Benediction with the monstrance some maize a very large sign oj the cross, lifting it above the head and using a wide sweep from left to right·, others appear to omit the vertical movement altogether, merely moving it slightly from side to side. [j *the correct method determined by any rubrics ?*

J.R.C., 21 March, 1676, n. 1563: Sacerdos. . . . Ostensorium ante pectus tenet, tum elevat illud decenti mora non supra caput, sed tantum usque ad oculos, ct eodem modo illud demittit infra pectus, et deinde ad

sinistrum humerum ducit, et reducit ad dexterum, et rursus ante pectus reducit, ibique aliquantulum sistit quasi peracta ad omnes mundi partes Cruce, eam etiam venerandam omnibus praebet: tunc gyrum perficiens, collocat Ostensorium super Altare. *Resp.* Si ei placet, potest observare supradictum modum . . . sin minus, servandus est modus dispositus in *Caerem Epp.,* lib. ii, cap. 33, n. 27, ubi requiritur tantummodo, ut cum eodem SS. Sacramento Celebrans producat Crucis signum super populum.

Ritus Servandus, §9: In impertienda benedictione, sacerdos manibus velo coopertis accipit manu dextera nodum, sinistra vero pedem ostensorii, et convertens se dextrorsum ad populum summa cum reverentia signum crucis facit cum ostensorio (quin sacram hostiam supra oculos elevet) et dextrorsum se convertit ad altare perficiendo gyrum.

Everyone is agreed that, in principle, a blessing given to the people with the hand, the monstrance, or with any other object, follows the method of making the sign of the cross on one's self.[1] It is therefore clearly incorrect, from the above directions, to lift the monstrance above the head or to extend the lateral movements beyond the shoulders.

(i) In the common law, however, an alternative method of completing the benediction is permitted from n. 1563. The priest, before replacing the monstrance on the altar, may bring it again for a moment before his breast, a method recommended by Bauldry and others; or he may, after completing the sign of the cross, continue the lateral movement to the right, and replace the monstrance on the altar.

The official commentator, in Vol. IV of *Decreta Authentica,* p. 115, argues that the first method is merely permissive; the second, which is based on *Caerem. Epp.* is preceptive, and is the usual method observed in Rome: "Communis usus Ecclesiarum Urbis est, ut postquam sacerdos reduxit Ostensorium ad latus dexterum, non debet rursus ante pectus reducere. . . ."

(ii) In those dioceses which are required to use the English R/7w *Serrandus* it appears to us quite certain that the second method is to be followed: "dextrorsum se convertit ad altare perficiendo gyrum". The best description we have seen is that given by Augustine, *Eiturgical Lan|,* p. 352, which seems correct in all particulars: ". . . then he turns to his right on the epistle side towards the people, raises the monstrance up to his eyes, brings it down lower than his breast, then raises it in a straight line as high as his breast, afterwards brings it to his left shoulder, and completes the circle, turning himself to the altar to his right, on the gospel side."

171.—Method of Incensation

"R/7//J- *Serrandus,*" 1928,/). 14, *contains the following direction'. ". . . statim SS. Sacramentum incensat ter duplici ductu (quae verba non idem significant ac lter duobus ductibus") . . ." What is the difference between "ter duplici ductu" and "ter dtiobos ductibus" ?*

The numerous directions of the *Congregation of Rites* distinguish between *ictus* and *ductus* in describing incensation, e.g., n. 4048.9: "Thurificatio

1 Cf. *Ephemeriti·! IJ/urgùa,* 1932, p. 405.

SSmi Sacramenti facienda est duplici ictu in triplici ductu"; n. 3110.20: "In thurificatione duplex ductus . . . ita intelligendus est, ut unusquisque ductus perfici debeat duplici ictu"; n. 4057.2: "Thurificatio SSmi Sacramenti publice expositi, et Canonicorum, perficienda est duplici ictu in quolibet ductu"; the same reply gives a negative answer to the question: "Pcrficine debent duplici ictu ductus in thurificatione Altaris, et in solemni benedictione Candelarum, Cinerum et Palmarum ?"

The action is well explained in *Collationes Tornacenses, 1955,* p. 349, quoting a Roman *Caeremoniale.* "*Ductsis* et *ictus* thuribuli distinguendi sunt. *Ductus* enim thuribuli in eo consistit quod thurificans ipsum thuribulum, ad altitudinem cinguli fere sustentum, versus rem vel personam inccnsendam attollendo ducit et reducit. *Idus* vero qui insuper pro singulo ductu praescribitur, in eo consistit ut statim ac thuribulum usque ad altitudinem superioris pectoris elevatum fuerit, quidam motus ulterior cum ipso thuribulo ad objectum thurificandum perficiatur. Quando igitur pro unoquoque ductu thuribuli duplex ictus fieri debeat, iste motus thuribuli elevati bis sine mora peragitur, quo peracto thuribulum infra pectus demittitur, ut pro secundo vel et tertio ductu iterum attollatur (ductus) et bis eodem modo moveatur".

Crocgaert's description in *Caeremoniale,* I, p. 17, reads: ". . . thuribulum elevatur usque ad faciem, vibratur duplici ictu, et statim deprimitur, scilicet refertur ante pectus. Haec constituunt unicum ductum. . . ." There is a difference in these two descriptions as regards the height to which the thurible is lifted, a difference observable in other writers and in the preferences of the individual using the thurible. But there is no disagreement about the distinction between *ictus* and *ductus.* We may use the word "swing" in English for both actions; usually the *ductus* in English is not expressed at all: we say "three double swings", for example, in describing the coriect way of incensing tue Blessed Sacrament.

We think that the direction in the *Ritus Serrandus,* if it were expressed in the style employed by the *Congregation of RJtes,* would read: ". . . statim SS. Sacramentum incensat duplici ictu in triplici ductu". The words in brackets would not then be necessary, but they can only mean "quae verba non idem significant ac triplici ictu in duplici ductu".

172.—Incensation by Served

Should a server incense the Blessed Sacrament whilst the celebrant is giving the Benediction ?

5.R.C.,7 September, 1861, n. 5108.6: In expositione SSmi Eucharistiae sacramenti, dum a Sacerdote benedictio fidelibus impertitur, debet nec ne Thuriferarius incensarc SSmum ? *Rcsp.* Non praescribi; et servandam consuetudinem locorum. Λ previous reply, η. 2956.9» was merely "Non praescribi".

Commentar}' on the Clementine Instruction, *Decreta Authentica* (1900), IV, p. 117: Silentium quod tenent *Caeremoniale, Rituale, Instructio Clementina,* et auctores fere omnes, qui ceteroqui nihil omiserunt de iis, quae in sacra hac actione servanda sunt, plane suadet hanc incensationem esse omittendam: nihilominus Cavalcrius et Tetamus . . . innixi quodam Decreto, quod

dicunt Romae datum 16 March, 1746, ct Rubrica Missalis tit. 13 existimant faciendam esse, vel saltem in arbitrio relinqui. Videtur tamen magis congruere contrariam sententiam consentencam silentio *Caeremonialis, Ritualis* ct *instructionis.*

To the above liturgical books, which say nothing about this inccnsation, should be added our English *Ritus Serrandos.* Fortescue holds that inccnsation is the custom with us in this country, in which ease we have merely to continue the custom as directed by n. 5108. The mode of incensing should then be, it seems, with three double swings as explained in Q. 171.

If there is no settled custom the authors are, on the whole, against introducing it, and we arc in agreement with them for the reasons outlined by the commentator on the *Clementine instruction.* No one has ever succeeded in tracing the alleged decree of 16 March, 1746, which is probably only a private reply given by some Roman rubrician. Nor does the rubric of the Missal provide an argument in favour of the practice: the thurifer performs the incensation because deacon, sub-deacon and ceremoniarius are occupied: in Requiem Masses the sub-deacon is directed to do it since he is not holding the paten as in other Masses; this is the only occasion on which the Sacred Species arc incensed during Mass and the thurifer does it *faute de mieux·,* but during the rite of Benediction this inccnsation has already been performed by the celebrant, and it is unfitting that it should be repeated by another person of lower dignity. The chief argument, however, against the practice is the silence of the rubrics on the subject.

173.—Assistant Priest at Benediction

In churches served by more than one priest, is there a strict obligation for a second priest to be present on the sanctuary to assist the celebrant? If he does sc, is it more correct for the celebrant to take the monstrance from the altar or to receive it from the hands of the assistant priest ?

I Wests»., Dec. IV, n. 4: In expositione et benedictione exacte servetur ritus iam ab episcopis approbatus, et typis impressus. . . .

Ritus Servandus (1928), Praemonenda 5: In ritu hic descripto supponitur assistentia alterius prebyteri, praeter principalem sacerdotem. Huiusmodi assistentia ita praescripta habeatur, ut in Ecclesiis quibus plures inserviunt sacerdotes nunquam deesse permittatur.

Rubric 9: Deinde aut presbyter vel diaconus assistens ostensorium icelebrant stans stanti tradit; aut celebrans ostensorium super altari positum pse accipiit.

(i) Apart from the *Clementine Instruction* for Exposition, upon which the rite of Benediction is based, there appears to be no express direction of the common law on the necessity for an assistant priest or deacon. In England, the obligation is certain from the text of the *Ritus Servandus,* and Ordinaries occasionally declare that the observance of all the details of this Rj7w is a condition attached to their permission for Benediction at stated times.[1] Also, diocesan laws frequently define more closely the word "plures".

[1] E.g. *Middlesbrough Decrees,* 1933, n. 192·

Thus, in Lancaster the rule is to be applied in churches served by three or more priests.1 In Liverpool, an assistant priest is required in churches served even by two priests.2 If there is no local law, we are of the opinion that the rule is obligatory in churches served by at least three priests.

Like any other positive law it docs not bind *sub gravi incommodo,* but some idea may be formed of the binding force of the regulation from the fact that the rubric continues: "Potius ad hunc sacrum ritum, in festis praesertim solemnioribus, omnes, si fieri potest, devote conveniant sacerdotes." It is for the rector of the church to decide whether there is a sufficiently grave cause for departing from this rule in any given instance. In making a decision, it could be remembered that Benediction is far more frequently given nowadays than it probably was when the rule of the *Bahts Servandus* was first formulated, and the difficulty of always securing an assistant priest is accordingly increased. Some wonder whether an increase in the number of Benedictions necessarily implies an increase of devotion towards the Blessed Sacrament. Gardellini has an account of the divergent views of some writers on this point, in his commentary on n. xxxvi of the *Clementine Instruction,* but he prudently declines to reveal his own opinion: "Quis autem sum ego, qui velim in hac me ingerere controversia ?"

(ii) The alternative method of taking the monstrance is allowed since *Carem. Epp.* II, xxxiii, 27, has no reference to the intervention of the deacon at this point: "accedet ad altare, et accepto tabernaculo, seu ostensorio . . . iterum deponit sanctissimum Sacramentum super altare . . but the Roman use, as instanced in n. xix of the *Clementine Instruction,* directs the deacon to place the monstrance in the hands of the celebrant: "il diacono . . . prenderà il Sacramento, e siando in piedi, lo consegnerà al celebrante gcnuflesso". Hence *S.R..C.,* n. 3975.4: "Aut servatur Ritus a Cacremoniali Episcoporum praescriptus; aut iuxta praxim Romanam, Diaconus Ostensorium celebranti tradere vel ab eodem recipere potest, utroque stante."

174.—Deacon Touching Holy Eucharist

***If** a deacon, exposing at Benediction, finds it necessary to touch the Blessed Sacrament, should he do this himself or summon the celebrant ?*

Our modern law, as in canons 741, 845, §2 and 1274, §2, requires some grave or just cause for the performance by a deacon of certain functions. It is therefore our opinion that it is unlawful for a deacon to touch the Blessed Sacrament when a priest is present, notwithstanding the fact that, as regards exposing the Blessed Sacrament, he is the ordinary minister and requires no special permission. For the act of Exposition does not normally include touching the Blessed Sacrament; even in earlier days, when he always administered the chalice, this was forbidden, as St. Thomas explains in III, 82, 5, ad 1: "ergo dicendum quod diaconus quasi propinquus ordini sacerdotali aliquid participat de eius officio, ut scilicet dispensat sanguinem . . . quia sanguis continetur in vase, unde non oportet quod

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1 *Statuta,* 1956, n. 165.
* *Sjnod,* 1954, n. 204.

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tangatur a dispensante, sicut tangitur corpus Christi." It appears, therefore, that permission is necessary from canon 845, §2, precisely because administering Holy Communion nowadays involves touching the Holy Eucharist. Nor, in the above case, is there any real necessity, since the celebrant can easily ascend the altar steps without causing any surprise to the people present. Cf. *l' Ami du Clergé,* 1910, p. 944.

175.—Ciborium Benediction

What are the rules to be observed regarding Benediction with the ciborium and the frequency of the rite ?

Whatever may have been the use of the terms before the Code, Exposition of the Blessed Sacrament is called "public" if the monstrance is used, and it is permitted on Corpus Christi, during the Octave, and during October; at other times for a just and grave cause, provided the permission of the Ordinary is obtained. It is called "private" if the Blessed Sacrament remains in the tabernacle, the doors of which arc opened, and it is permitted for any just cause without the permission of the Ordinary.[1] The just or reasonable cause is not closely defined. It is forbidden, for example, for the priest to open the tabernacle merely for his own private adoration of the Blessed Sacrament.[2] But the devotion of pious persons, or the desire to offer special prayers during times of sickness, would be sufficient reason.

It appears lawful to place the ciborium, veiled, near the opening of the tabernacle,[3] but it is forbidden to remove the ciborium from the tabernacle in order that it may be more easily seen by the faithful.[4] The logical conclusion of this rule would be that Benediction with the ciborium on these occasions is not allowed, as Benedict XIV decided; ancient liturgical practice is restricted to two Benedictions given with the ciborium: to the sick, after receiving Holy Communion in their homes, and to the people who accompany the Blessed Sacrament back to the church. But the custom has become universal of concluding a pyx Exposition with Benediction and it is now sanctioned by the Holy See.[6]

The use of incense is not strictly forbidden but "omissio incensationis conformior est Ecclesiae praxi in benedictione cum pyxide".[6] The priest wears cotta and stole; the humeral veil, entirely covering the ciborium, must be used for the Benediction.' As the function is not liturgical, writers on ceremonial differ with regard to the minimum number of candles to be lighted, some requiring six, others only two. Any approved prayers may be said and it is customary to conclude with the *Tantum Ergo* and the *Divine Praises.*

It is absolutely forbidden to have Exposition of this kind at an altar

1 Canon 1274.
• N. 3832.2.
• Augustine, *IJ/urgitat Law,* p. 328.
* Nn. 3394.1 and 4180.2.
*N. 3875.3; Gasparri, *De Ewbaristia,*
* N. 2957.
' Nn. 3780.1 and 3888.

where Mass is being said or sung. In making this decision the T.R.C.1 reaffirmed the law which forbids the celebration of Mass at an altar upon which the Blessed Sacrament is exposed, except in eases of necessity, for example, in chapels where there is perpetual adoration of the Blessed Sacrament, and no other available altar. The reason, of course, is to prevent the attention of the faithful being drawn away from the sacrifice of the Mass. There is no small danger of this happening through the multiplication of Benedictions, even when given with the ciborium, and a priest should bear this in mind before yielding too frequently to the popular desire.

176.—Repeated Benedictions

Is Benediction of the Blessed Sacrament permitted more than once a day in the same church ?

S.R.C., 12 January, 1878.5: An liceat in una eademque die atque in eadem Ecclesia pluries cum Sanctissimo Sacramento benedici populo ? *Resp.* Affirmative de licentia Episcopi.

The only principle governing the number of times Benediction with the monstrance may be given is that, apart from the common law for Corpus Christi and Octave contained in canon 1274, §1, and during October, the permission of the local Ordinary is required. It is open to him to refuse permission for the rite more than once a day if he so desires.

During a procession of the Blessed Sacrament is the celebrant permitted to give a blessing with the monstrance to sick people on the way ?

Caerem. Epp., II, xxxiii, 22, makes it quite clear that the halts during a procession of the Blessed Sacrament were originally for the purpose of providing a rest for the celebrant in a long procession; they arc restricted to two, and in each case the Blessed Sacrament is incensed and the prayer sung. In many places it became customary, in addition, to give a Benediction at each of these halts; it was sanctioned by *S.R.C.,* n. 2609: "non toties pausatio fiat et benedictio elargiatur quoties Altaria occurrant, sed semel vel iterum". Cf. nn. 5488.2 and 5621.3, confirming n. 2609; and the official commentary in Vol. IV of *Decreta Authentica,* p. 81, η. 15, and p. 200.

Considering, therefore, that the practice of halting and giving Benediction is itself a departure from rule, and may not be permitted more than twice, it seems clear to us that additional Benedictions arc not permitted even in favour of sick persons *en route.* No doubt an indult has been obtained for this practice at Lourdes, but wc can find no authoritative information on the point

177.—The Number at Benediction

There is a widely spread persuasion that Benediction is not permitted unless at least twelve persons are present. If such a law exists it would be convenient io know where it is to befound.

**A.A.S.*, XIX, 1927, p. 289.

(i) The *Code Commission,* 6 March, 1927, ad 5, decided that Benediction with the monstrance is included in the law of canon 1274, §1, relating to public Exposition of the Blessed Sacrament. By implication, Benediction must also be regulated by other laws affecting public Exposition, and notably by the *Clementine Instruction* in so far as it is applicable.

Amongst a great mass of detail two things stand out prominently: permission is required, which is given *de itéré* on certain occasions, and by the local Ordinary on other occasions;[1] due reverence is also required, which includes the proper observance *of* the ceremonies prescribed, singing of chants, etc. These two things are connected, since the law prescribes the intervention of the Ordinary precisely in order to secure the measure of reverence which is demanded in the nature of things. Before the Code, the law required a public cause, for example, the spiritual utility of a number of the faithful, but canon 1274 is more liberal: "ex iusta gravique causa praesertim publica et de Ordinarii loci licentia".

There is no legal definition of what constitutes a "public" assembly or a "number" of the faithful. ?\rguing from analogous instances, Vermeersch gives this satisfactory solution: "ratio populi inest in omni communitate quae decem saltem sociis componatur".[2] Anxiety about the number of people present was a proper preoccupation of a priest in days when a public cause was always required; it is less so now since the law permits other causes as well. But it is to be noticed that due reverence must always be secured, and this cannot exist without a certain number of people assisting. It is not permitted to expose the Blessed Sacrament, even privately (expositio privata seu cum pyxide), merely for the satisfaction of a priest's devotion.

(ii) In the common law there is nothing determined about the number present, and there is certainly no law prescribing twelve.[3] Since, for the most part, the Ordinary's permission is required for Benediction with the monstrance, it is absolutely within his competence to withhold it unless a certain number are present. The Archbishop of Bologna made regulations in 1936 restricting the occasions of Benediction in various ways, but the number present is not determined.[4] The conviction that twelve persons must be present is very widely spread in England, but we can discover nothing in this sense in the *Westminster Councils* or in more recent collections of episcopal laws. One suggestion is that we have got confused with the number of candles required! It is diflicult to account for so precise and definite a rule unless it was imposed by some authority, and we suspect that it originated, perhaps, at a meeting of the bishops who communicated it to the clergy. Whatever its origin, the rule is in possession and is, if you like, a customary interpretation of the number required for securing a due measure of reverence. From every point of view, it seems to us that the rule should prudently be maintained.

1 Cf. Gardcllini in §36 of the *Instruction.*

* *Periodica,* 1950, p. 84.

' Cf. *Pastoralia,* 1895, p. *2; Fanfani, *De lure Parot Lorum,* §27;; *ГAmt du C/ergi,* 1921, p. 80, and 1922, p. 575. *Irish Ecclesiastical Record,* May and June, 1908, pp. $45, 544; *Ecclesiastical Review,* XXV, 1901, p. J48.

* *Ephemerides Uturgicae,* 1957, p. 55·

178.—Camp Benediction

Maj the Blessed Sacrament be taken from the church to a building in a camp, wherein the Blessed Sacrament is not reserved, for the sole purpose of Benediction?

Canon 1274, §1: In ecclesiis aut oratoriis quibus datum est asservare sanctissimam Eucharistiam, fieri potest expositio privata seu cum pyxide ex qualibet iusta causa sine Ordinarii licentia; expositio vero publica seu cum ostensorio dic festo Corporis Christi et intra octavam fieri potest in omnibus ecclesiis inter Missarum solemnia et ad Vesperas; aliis vero temporibus nonnisi ex iusta et gravi causa praesertim publica et de Ordinarii loci licentia, licet Ecclesia ad religionem exemptam pertineat.

Code Commission, 14 July, 1922, x: Utrum ecclesiae, in quibus, ad normam can. 1274, §1, . . . sint illae tantum quibus datum est asservare sanctissimam Eucharistiam? R. Affirmative, firmo praescripto can. 1171.

Rituale Romanum, Tit. iv., cap. iv., n. 5: Sed alicui ad adorandum solum, vel devotionis seu cuiusvis rei praetextu, ad ostendendum ne deferatur.

J.R.C., 12 June, 1638, η. 640: Delationem SS. Sacramenti extra Ecclesiam non esse permissam, nisi occasione solemnis processionis . . . necnon occasione infirmorum.

Propaganda, 25 February, 1859; *Fontes,* n. 4846: . . . talia edas decreta ex quibus delatio SS. Sacramenti ad urgentes tantum causas, atque ad actuale ministerii sacerdotalis exercitium coarctetur. . . .

(i) It is certain that a priest may not on his own authority, not even a parish priest within his parish, take the Blessed Sacrament to another place where it is not reserved, solely for the purpose of giving Benediction. The reason is the rule of canon 1274, §1, and the prohibition of canon 1265, §3, against journeying with the Blessed Sacrament, except of course in an authorized public procession or for the purpose of communicating the sick. The documents cited in the footnote to this canon expressly forbid certain practices, such as blessing the scene of a fire or other calamity with the Holy Eucharist.

5.R.C., nn. 2690 and 3059.19, tolerate in one case, and permit with the Ordinary's approval in the other, a practice of giving Benediction to the people of a house or city on the occasion of taking the Blessed Sacrament to the sick. But we can find no express directions about the lawfulness of Benediction in other circumstances.

(ii) Neither can we find it anywhere expressly stated that the Ordinary may not give this permission. We have been told on the best authority, though the text is not available, that the bishops of Australia assert their power to permit such Benedictions in n. 151 of the *Third Plenary Council.* Liturgical writers are usually content with stating what we have recorded under (i) above, but two, at least, without giving their reasons, hold that the Ordinary may authorize the practice: *l'Ami du Clergé,* 1920, p. 560, and *Ecclesiastical Review,* LXI, 1919, p. 96. We think, therefore, that a priest could quite properly seek permission from his Ordinary for Benediction in camps and other places at the present time: it will be granted or refused at the Ordinary's discretion.

179.—O Salutaris

The "Ritus Servandus' directs the "O Salutaris" to be started at the moment the Blessed Sacrament is exposed. Does it not follow, therefore, that the custom of singing it when the tabernacle is opened is against this rubric ?

We think that the existing custom is not actually against the direction of this rubric. The Blessed Sacrament is exposed, though not yet enthroned, when the tabernacle is opened; a previous direction reads "ostensorium super corporale in throno collocat", and it would appear that if the rubric directed the singing of the hymn to start when the Blessed Sacrament was enthroned it should read "in ipso momento SS. Sacramenti in throno collocandi". Nor can the word ' 'solemniter" be applied exclusively to the action of enthroning the Blessed Sacrament; "solemn" and "simple" in this context are synonyms for "public" and "private" as in canon 1274, §1, and it is the use of a monstrance which constitutes public Exposition, not the use of a throne: a throne is in fact unnecessary if the altar has a canopy, as the first paragraph of the rubrics states. Therefore, by applying the word "solemniter" to the whole rite when a monstrance is used, instead of restricting it to the act of enthronement, our custom of starting the hymn when the tabernacle is opened is not contrary to the rubric but rather in accordance with it. "In ipso momento SS. Sacramenti solemniter exponendi" means at the moment of exposing, i.c. removing the Blessed Sacrament from the tabernacle in order to place it in the monstrance for a solemn or public Exposition.

Is it strictly of obligation to sing this hymn always at the beginning of Benediction ?

I. Westm., Dec. XVIII, n. 4: In expositione et Benedictione exacte servetur ritus jam ab episcopis approbatus et typis impressus. . . .

Ritus Servandus, Praemonenda: Quo vero accuratius novus haec omnia Ritus exprimeret, placuit cum, antequam typis exscriberetur, S. Rituum Congregationis Consultori exhibere, qui eiusdem Congregationis viris rei liturgicae componendae delectis a Secretis est. Porro sancitus est a Sacra Rituum Congregatione.

Rubric 6: Consuetudo omnino servanda est quae apud nos invaluit cantandi hymnum *O Salutaris Hostia* in ipso momento SS. Sacramenti solemniter exponendi.

The doubt arises from the fact that there is no common law prescribing this hymn to be sung, and it is not the usual practice in Rome. Nevertheless, since the details concerning what shall be sung or said are left to the local Ordinary to determine, it is quite certain, from the above quotations, that in all dioceses where the use of the *Ritas Serrandus* is of obligation the *O Salutaris* must be sung whilst the Blessed Sacrament is being exposed.

Should the incensation be delayed until the first verse is finished ?

The doubt is probably due to the rule which prescribes the second

inccnsation to take place "ad initium sequentis strophae *Genitori Genitoque . . .*" There is no similar direction for the second verse of the *O Salutaris.* On the contrary, the rubric n. 6 states that the first inccnsation should take place immediately after the Blessed Sacrament is exposed; it is therefore correct to perform the inccnsation without any reference to the stage reached in the singing of the hymn.

180.—Prayers During Corpus Christi Octave

A ruling of S.R.C. is quoted in some books to the effect that, during the Octave of Corpus Christi, no prayers except those addressed io Our Lord in the blessed Sacrament may be recited during Exposition. Should one, therefore, omit the prayer to Our Ladyfor the conversion of England?

(i) The rule is no longer, we think, the common liturgical law throughout the Church. Certain authors used to teach that it was more fitting to exclude other prayers during the Octave of Corpus Christi,[1] and J.R.C., 25 November, 1906.11, adopted this rule: "An in functione Benedictionis SS. Sacramenti, praeter orationem de eodem, alia cantari possit? *Resp.* Affirmative, priusquam cantetur *Tantum Ergo,* quando aliae dicendae sunt preces. Negative in casu opposito, necnon in festo et infra Octavam SS. Corporis Christi."[2] But when this series of answers under the date of 23 November, 1906, appeared in *Decreta Authentica* η. 4195, published in 1912, the exception previously made for Corpus Christi and its Octave was omitted, and the answer to the question ad x (not xi) is "Affirmative . . . preces. Negative, nisi aliter Apostolica Auctoritate statutum fuerit". One commentator on the authentic form of the decree writes: "Haec prohibitio canendi in laudibus vespertinis orationem B.V.M., in festo et infra Octavam SS. Corporis Christi sat singularis videbatur et certe contra usum in nostris regionibus acceptum. Nihil mirum proinde si fuerit sublata."[3]

(ii) Either relying on local custom, or because the liturgists who had heard of the decree only in its original unauthentic form continue to abide by it, the local law at present in many places preserves the original ruling of *S.R.C.* It is given, for example, in our *Ritus Servandus,* p. 14, and the diocesan *Ordo* occasionally inserts a reminder with a reference to the *Ritus Servandus.* We think that, in principle, one must obey the local law of the *Ordo* and the *Ritus Servandus* in places where they are obligatory, unless Ordinaries issue directions to observe the common law.

181.—Divine Praises

Wbat is the origin of the Ditine Praises usually recited at Benediction, and on what principle is the list compiled? May they be recited after low Mass in addition to the Leonine Prayers?

[1] E.g. Hacgy, *Cirè/nonial,* 1902.
[2] *Periodice,* 1911, p. 32.
[3] *Ibid.,* 1914, p. 32.

(i) Apart from two later additions, these Divine Praises were composed by Fr. Felici, S.J., in 1797, as part of his campaign in Rome against blasphemy. Indulgences were granted for their recitation from 23 July, 1801, onwards, as recorded in *Preces et Pia Opera,* η. 646, and the devotion spread from Rome to the papal States and throughout the world; Cf. Beringer, *Les Indulgences,* I, §197. It is clear, therefore, that the selection was made, in the first instance, on a principle of making reparation for certain common blasphemies, and if this is remembered it will be understood why the list has no particular doctrinal coherence: the Holy Spirit, for example, is not mentioned.

Though the devotion is still described in the current *Preces et Pia Opera* as "Laudes in Blasphemiarum Reparationem", it is likely that the original purpose is forgotten or obscured, owing to further Praises being added for reasons, perhaps, other than reparation for blasphemy. Since, however, the idea of reparation is an essential element in devotion to the Sacred Heart, the fifth Praise, added by Leo XIII, is well within the original purpose of this devotion. J.R.C., 23 February, 1921, n. 4365, in ordering the addition of St. Joseph, recalled the original purpose of the devotion, but the addition itself was part of the Jubilee commemoration of St. Joseph being named Patron of the Universal Church.

(ii) In principle it is not permitted the celebrant, after low Mass, to recite publicly any prayers except those ordered by a competent authority, or, what amounts to the same thing, those which custom has authorized: ^.R.C., 31 August, 1867, n. 3157.7: "An possint praecipi, aut saltem permitti aliquae preces recitandae ad Altare post Missam, non depositis sacris vestibus ? Obstare videtur Decretum in Conversanen., diei 31 Augusti, 1669. *Resp.* Affirmative, dummodo preces dicantur assentiente Ordinario." The 1669 decision directed the priest to remove his Mass vestments before the recitation of certain prayers.

Amongst the indulgences attached to this devotion, the older collections record "two years" for their recitation after Mass (2 February, 1897), from which it could be concluded that, though not ordered, the Divine Praises could lawfully be recited after Mass. We think, nevertheless, that uniformity is desirable, and that priests should not add the Divine Praises to the Leonine Prayers, except in places where it has become customary. This view is further supported by the fact that the current *Preces et Pia Opera,* η. 646, has no reference to the recitation after Mass; instead we read: "Indulgentia trium annorum. Indulgentia quinque annorum si publice laudes recitatae fuerint. Indulgentia plenaria suetis conditionibus, dummodo quotidiana laudum recitatio in integrum mensem producta fuerit."

182.—Forty Hours: "Missa Pro Pace"

During the "Forty Hours" prescribed by the bishop during Lent for a church which may be classed as one of the "ecclesiae minares" of Rubricae Generales, XIX, 7, a question is raised concerning the vestments of the assistant ministers in the "Missa pro Pace". Should they wear folded chasubles or dalmatic and funicle ? If the latter, and toe church does not possess these vestments, could the deacon assist in alb, girdle, maniple and stole, and the sub-deacon in alb, girdle and maniple ?

Attached to the "Forty Hours" arc many indulgences and liturgical Erivilegcs, the enjoyment of which requires a due observance of the regu- tions imposed by the Holy Sec. The doubt formulated above arises from the difficulty of observing one of the requirements of the *Clementine Instruction*—the solemn votive *Missa pro Pace* on the second day.

(i) It is certain that the indulgences may be gained even though the *Clementine Instruction* is not fully observed, c.g. when the Exposition is discontinued during the night. This is expressly stated in *Preces et Pia Opera,* η. 140, b, provided the Ordinary's permission is obtained for a simplified rite of Exposition for three days. The text of this decision repeats that of the *Holy Office,* 22 January, 1914, and of the *Sacred Penitentiary,* 24 July, 1933. A modified form of "Forty Hours" is always styled *ad instar* to distinguish it from the *forma propria* carried out strictly according to the *Clementine Instruction.* The rite *ad instar* does not necessarily require a solemn Mass on the second day.

(ii) The liturgical privileges, which may be studied in any liturgical manual, in *The Clergy Retiew,* VI, 1933, p. 186, and particularly in Fr. O'Connell's English translation of the *Clementine Instruction,* include the use of votive Masses during the Exposition on days when such are not normally permitted by the rubrics. The *Holy Office* and the *Sacred Penitentiary* have decided that the spiritual privileges continue in the form *ad instar·,* but the liturgical privileges arc regulated by the *Congregation of Rites,* which has never, so far as we know, permitted any general deviation from the requirements of the *Clementine Instruction·,* the reply, n. 4268, given to an inquiry from Westminster, 27 May, 1911, was: ". . . circa Missas Votivas serventur Rubricae et Decreta, nisi extet vel obtineatur speciale indultum". Accordingly, the liturgical privileges may not be enjoyed unless the rite is carried out *informa propria, e.g.* the votive Masses must be solemn. Obviously, the possession of an induit from the Holy See may modify the *Clementine Instruction* in many directions; otherwise a votive low Mass or a sung *Missa pro Pace* is permitted only when the rubrics permit votive Masses, and no special privileges may be claimed by reason of the Exposition.

In practice, a parish priest who is unable to have the full rite *in forma ropria* must follow the local *Ordo* or obtain the sanction of the Ordinary for what he proposes to do. The Ordinary's permission certainly safeguards the spiritual privileges as we have seen, and if permission is also obtained for certain liturgical privileges, it may be assumed that the Ordinary has an induit for the purpose, or is using the powers he enjoys in the common law, e.g. from *Addit, et Variat.,* II, 3, for a solemn votive Mass "pro re gravi et publica simul causa", or from canon 1292 for a procession.

(iii) The position of the questioner is that he is able to have the Exposition *informa propria* except that the church possesses no purple dalmatic and tunicle for the solemn *Missa pro Pace.* Our opinion is that the celebration of this Mass with ministers improperly apparelled would be an unjustifiable departure from the *Rubricae Generales,* XIX, 5: "Dalmatica et Tunicclla utuntur Diaconus et Subdiaconus in Missa solcmni . . *afortiori* it would also be against the *Clementine Instruction,* §xv, which in prescribing a solemn Mass directs that it shall be celebrated according o the rubrics "cum ministris paratis".

The liturgical writers do not usually consider the lawfulness of celebrating Mass without the appropriate vestments, but the moral theologians

—concerned as they are with human frailties and necessities—discuss the kind of grave necessity which might justify a priest saying Mass without this or that vestment. But none, so far as can be discovered, considers the assistant ministers acting in this manner; for the kind of necessity a theologian has in view is, for example, the need of administering Viaticum or of providing Mass for a concourse of people on a feast day. The desire for a solemn Mass rather than a low Mass, or for a votive Mass rather than the proper of the day, would be considered a liturgical luxury rather than a necessity.

(iv) Finally, the use of folded chasubles at the *Missa pro Pace* would, in our opinion, be wrong, since this Mass is a solemn votive Mass, even though it occurs during Lent; but the folded chasuble is used only at Klasses *de tempore* during Lent, Advent and some other occasions, as set out in *Rubricae Generales,* XIX, 6.1 The following rubric, n. 7, does perhaps lend some support to the view that a solemn Mass may, for appropriate reasons, be celebrated with neither dalmatics nor folded chasubles; but it will be observed that the circumstances are there limited and specified, since on the one hand the folded chasuble is not permitted in the lesser churches mentioned in this rubric, and on the other hand dalmatics are forbidden at Masses *de tempore* on certain occasions. The rather obscure reasons for these distinctions in the use of folded chasubles are examined by Dr. Callewaert in *Ephemerides Eitnrgicae,* 1936, p. 69.

183.—Forty Hours "Ad Instar"

When Exposition of the Blessed Sacrament takes place on three successive days without night watching, should the rubrics prescribed by the Clementine Instruction be observed regarding votive Masses, processions and litanies ?

The indulgences attached to this devotion may be gained whenever, with the Ordinary's permission, three successive days of Exposition ("Forty Hours" *ad instar)* take the place of the devotion as determined in the Clementine Instruction ("Forty Hours" *in forma propria).*

The Congregation of Rites has not sanctioned the use of the liturgical privileges, particularly the votive Masses, for the form *ad instar,* nor has it directed that there shall be processions and litanies on these occasions. But local induits have been obtained and, in many places, the Ordinary explicitly directs what has to be done. Cf. *Preces et Pia Opera,* η. 140, b.

184.—Collection During Exposition

Is there, strictly speaking, any law forbidding the usual church collection to be made daring Exposition of the Blessed Sacrament ? If there is a law, it appears to be generally disregarded, not only in churches but in convent chapels where the Blessed Sacrament is permanently exposed.

The law is found in §xxviii of the *Clementine Instruction,* translated in the

» Cf. *S.R.C.,* nn. 9.9 and 2646.4.

English edition as follows: "During the Exposition collecting plates arc not to be placed in the church, nor are collectors—clerical or lay—to collect in the church. Nor are beggars to be permitted to seek alms within the church." Gardcllini writes in his commentary on this section: "huius finis praecipuus est, quod nulla praebeatur occasio fidelibus avertendi mentem et animam ab oratione". He decides, in the case of poor churches, whose means arc unequal to the expenses of the function, that a collection may be made at the doors of the church: "Verumtamen magna cum cautela id fieri oportet, cum ne distrahantur ab oratione fideles, tum ne aliquibus eleemosynarum collectio offensioni et scandalo sit."[1] His ruling is also that of *S.R.C.,* n. ji 57.10: "prope scilicet ecclesiae januam et absque rumore".

The Instruction also forbids collections in the church during a "particular" Exposition "delle Esposizioni anche particolari", i.e. Exposition for a shorter period than that of the "Forty Hours". As far as we are aware, the collection is usually taken before the Blessed Sacrament is exposed or at the end of the rite, thus observing the law.

185.—October Devotions: Obligation

Is there any groundfor supposing that these devotions, introduced by Leo XIII, are no longer of strict obligation? Also why must ire continue October devotions up to and including 2 Novesaber?

(i) The devotion must obviously be continued in those dioceses in which the practice is enjoined locally; and even in places where there is no explicit direction on the subject the devotion must be continued, since it is a form of public worship enjoined everywhere.

The reason which has led many to suppose that it is no longer obligatory to recite the rosary publicly, during Mass or Benediction in October, rests on the fact that the Roman question is now happily settled by the Lateran Treaty. Just as prayers ordered *tempore belli* will cease, without further directions, when peace is declared, so also should these special devotions—*peetdiares preces* as they were styled in the Encyclical, 1 September, 1883—cease to be of obligation when the purpose for which they were ordered has been obtained. That indulgences continue to be attached to the devotions is no argument for their continuance as a strict obligation.[2]

The chief objection in the minds of many is the recitation of the rosary aloud during Mass, and this can be met by reciting it during Exposition of the Blessed Sacrament, as the original Encyclical and many subsequent decisions have made clear: "eodem tempore vel sacrum ad altare fiat, vel Sacramento augusto ad adorandum proposito, etc".[3] We have noticed a curious inversion in a few of the subsequent decrees on the subject, which refer to Mass being said during the recitation of the Rosary: "quod si mane fiat Missa inter preces celebretur .... quod si mane Rosarium cum litaniis recitetur, Sacrum inter preces peragatur".[4]

[1] *Decreta Authentica,* IV, p. 101.
[1] Cf. *Questions Liturgiques et Paroissiales,* XV, 1950, p. 101.
[3] *Supremi Apostolatus,* 1 September, 1885.
[4] S.R.G, 20 August, 1885, 16 January, 1886, n. 3650.5.

(ii) An examination of the many Encyclicals and later decrees has not revealed why the devotions have to be extended to 2 November. We should expect that it has something to do with the Holy Souls, and in the only reference we can find this is accepted as the reason: "Perbene igitur Rosarium applicatur defunctis . . . En quare ipsa Ecclesia voluit ut indulgentiae omnes rosarianac applicabiles sint defunctis, ct etiam quod exercitium mensis in honorem SS. Rosarii Octobris finiatur ipsa die Commemorationis omnium fidelium defunctorum."[1]

186.—October Devotions: Morning Exposition

Is one permitted to expose the Blessed Sacrament immeditaely after Mass during October, and to recite the prescribed prayers then instead of during Mass, when it is found inconvenient to bave Exposition during the afternoon or evening?

S.R.C., 16 January, 1886, n. 3650.5: Quum eodetn decreto praecipitur quod si mane Rosarium cum Litaniis recitetur, Sacrum inter preces peragatur; quaeritur: Num haec verba ita intelligi debeant ut Rosarium uno codcmquc tempore dicatur quo Missa celebratur; vel potius Missa antea celebranda sit, ac postea Rosarium cum Litaniis recitetur, quemadmodum fieri solet in Palentina Diocesi? *Resp.* Affirmative ad primam partem; Negative ad secundam.

20 August, 1885: Decernit itaque et mandat . . . ut quinque saltem Mariani Rosarii decades, cum Litaniis Lauretanis quotidie recitentur: quod si mane fiat, Missa inter preces celebretur: si a meridie, Sacrosanctum Eucharistiae sacramentum adorationi proponatur, deinde fideles rite lustrentur.[2]

(i) Supposing that the rector of the church prefers to have these devotions during Exposition instead of during Mass, the question put is whether this Exposition may, in the common law, take place before midday. The answer must be, we think, that this is not permitted, since the directions of T.R.C., 20 August, 1885, arc quite clear and explicit: if the devotions take place before midday the prayers are to be recited during Mass. That this text was not printed in the *Decreta Authentica of* the Congregation is not, we think, of any moment, since it was concerned substantially with decreeing the continuance of the devotions "hoc pariter anno et annis porro sequentibus", a law which has been established in a number of other texts; the mode in which the law is to be observed is accidental to the main question and obligation. We find, accordingly, in *Ephemerides Eiturgicae,* 1928, p. 46, that the rule given by T.R.C., 20 August, 1885, is fully sustained: "Equidem iuxta Encychcas Leonis PP. XIII et decreta S.R.C. . . . expositio SS. Sacramenti nonnisi *post meridiem* facienda ibi praescribitur."

(ii) So far the common law. *S.R.C.,* 26 August, 1886, n. 5666, decided that the Ordinary could prudently permit the observance of the law by a pyx Exposition and Benediction, in churches where solemn Exposition with the monstrance, as required by the former decrees, was found too difficult to observe. The law, therefore, permits the Ordinary to sanction a

, 1 Fanfanl O.P., *Dt Rosario,* p. 30.

• Thl» decree was not reprinted in the *Decrf/a Authentica* of the Congregation, but it is referred to in nn. 3650 ana 3666. Cf. *A.S.S.,* XVIII, p. 95; *Leeds Sjnods,* 1911, p. 22.

mode of Exposition which differs from that in the common law. In our view the same may be held when it is desired to perform these devotions at a time other than that determined by the common law, namely by reciting the rosary, etc., before the Blessed Sacrament exposed immediately after Mass. The Ordinary's permission should first be obtained either for private (pyx) or public (monstrance) Exposition at this time, and everything will then be in order.

187.—October Benedictions: Ordinary's Sanction

If it is preferred, during October, to recite the rosary before the Blessed Sacrament exposed instead of during Mass, is it necessary to obtain the Ordinary's permission for parish churches to have public Benediction, i.e. with the monstrance?

The reason for the above doubt is contained in canon 1274, §1, which directs that the Ordinary's permission is not required for private Exposition (concluding with the pyx Benediction), but that it is required for public Exposition with the monstrance except on Corpus Christi and throughout the Octave. On the other hand, the legislation of Leo XIII permits public Exposition as an alternative to reciting the rosary during Mass. The question has often been raised whether the Leonine legislation is still in force, and we hold the view that it is. The papal permission for Benediction daily in October has at least never been expressly revoked, and from canons 2, 4 and 6 it still remains in force, even though it is not mentioned in canon 1274, §1. Accordingly, the correct solution of the doubt raised seems to be that the Ordinary's permission is not required for solemn Benediction in parish churches during October. Cf. Cappello, *De Sacramentis,* §417, v.

VI PENANCE

§1. CONFESSOR'S JURISDICTION

188.—Faculties of Seminary Rector

May the rector of a seminary who is accompanying some of his students on a pilgrimage outside the diocese hear their confessions if no other confessor is available? Parish priests enjoy this power, and it would seem that the seminary rector should also bare it.

Canon 1568: Exemptum a jurisdictione paroeciali Seminarium esto; et pro omnibus qui in Seminario sunt, parochi officium, excepta materia matrimoniali et firmo praescripto can. 891, obeat Seminarii rector eiusve delegatus, nisi in quibusdam Seminariis fuerit aliter a Sede Apostolica constitutum.

Canon 891: Magister novitiorum eiusque socius, Superior Seminarii collcgiive sacramentales confessiones suorum alumnorum secum in eadem domo commorantium ne audiant, nisi alumni ex gravi et urgenti causa in casibus particularibus sponte id petant.

Canon 873, §1: Ordinaria iurisdictione ad confessiones excipiendas potiuntur pro suo quisque territorio Ordinarius loci, et parochus aliique qui loco parochi sunt.

Canon 881, §2: Qui ordinariam habent absolvendi potestatem, possunt subditos absolvere ubique terrarum.

If it is decided that the rector of a seminar}' possesses ordinary jurisdiction for hearing the confessions of his subjects, it will immediately follow that, for urgent reasons, he may absolve them wherever they may happen to be. Whilst they arc in the seminary the point is rather theoretical than practical, since the rector will certainly enjoy, like all the clergy of the diocese, at least delegated jurisdiction from the Ordinary.

(i) Many commentators, including some on whom we are most accustomed to rely, such as Cappello, *De Poenitentia* §§387, 480, deny most emphatically that the seminary rector possesses ordinary jurisdiction for confessions. It is, they consider, almost absurd to say that a person possesses ordinary jurisdiction and is at the same time forbidden to exercise it except in urgent cases. In seminaries confessional jurisdiction is enjoyed by the ordinary and extraordinary confessors as provided for in canon 1561. Nothing certain can be deduced from the fact that the seminary is extra-parochial, since no mention is made of the rector in canon 451, §2, dealing with persons who arc equivalent to a parish priest; moreover, as in canon 464, §2, the Ordinary may withdraw a religious house from the care of the local parish priest and appoint a chaplain for the care of souls therein, but no one maintains that this chaplain possesses ordinary jurisdiction.

(ii) Those canonists, however, who have made a more detailed examination f the question, notably Ciprotti in *Apollinaris* 1935, p. 282, and

Onclin in *Jus Pontificium,* 1956, p. 70, arc equally certain that the seminary rector docs enjoy ordinary jurisdiction, and we think their view is correct. For the restriction in canon 891 is on the use of his powers, and the fact that he is forbidden to use them except in certain contingencies argues that he possesses them; otherwise it would have to be said, wc suppose, that jurisdiction is conferred by the student who for urgent reasons approaches the rector for confession. That the law provides for confessors, ordinary and extraordinary, in seminaries arises from the desire of the modern legislator that the faithful should have abundant facilities for going to confession. The seminary' rector is not mentioned in canon 451, §2, because he is not fully equivalent to a parish priest, since he enjoys no power for assisting at marriages, whereas the others mentioned in that canon arc fully equivalent. It is true that the chaplain of an extra-parochial religious house has no ordinary jurisdiction; but there is no reason for supposing that he has got it, whereas very good reasons exist in the wording of canon 1368 for supposing that the seminary rector has.

(iii) In any case, it is evident that canon 209 can be invoked in this *dstbinm inris,* and the answer to the above question is thereby affirmative, not only in the application of canon 881, §2, but as regards any other equivalent powers as in canon 899, §3.

189.—Confessions on Shipboard

What powers for bearing confessions are possessed by priests on a sea voyage?

Canon 883, §1: Sacerdotes omnes maritimum iter arripientes, dummodo vcl a proprio Ordinario, vel ab Ordinario portus in quo navim conscendunt, vel etiam ab Ordinario cuiusvis portus intcriccti per quem in itinere transeunt, facultatem rite acceperint confessiones audiendi, possunt, toto itinere, quorumlibet fidelium sccum navigantium confessiones in navi excipere, quamvis navis in itinere transeat vcl etiam aliquandiu consistat variis in locis diversorum Ordinariorum iurisdictioni subiectis.

§2. Quoties vero navis in itinere consistat, possunt confessiones excipere tum fidelium qui quavis de causa ad navim accedant, tum eorum qui ipsis ad terram obiter appellentibus confiteri petant eosque valide ac licite absolvere etiam a casibus Ordinario loci reservatis.

The very full faculties enjoyed by priests on sea voyages, as set out in this canon, are further explained by two replies from the *Code Commission.*

(i) The one essential thing is that the priest should already possess faculties for hearing confessions, and he is given the widest possible choice of Ordinary from whom these faculties may be obtained: his own Ordinary or the Ordinary of any port from which the ship sails or at which a call is made.

From the wording of the canon it is fairly evident that "Ordinarius loci" is meant, whose rights in granting confessional faculties, established by the Council of Trent after much dissension, arc codified in canon 874. The major superior of an exempt clerical Institute is also styled "Ordinary" in canon 198 and throughout the Code, and he may grant confessional faculties to any priest for the purpose of absolving his own subjects, as determined in canon 875 and 514, §1. The view was defended by some

canonists, including no less an authority than Vcrmcersch in *Periodica,* 1934, p. 33, that in canon 883 the word "Ordinarius" included the major superior of an exempt religious Institute. The chief reason for this view was that the canon has "Ordinarius" and not "Ordinarius loci", and further reasons are suggested in *Commentarium pro Religiosis,* 1934, p. 357. The *Code Commission,* 30 July, 1934, rejected this wide interpretation of canon 883. A religious, therefore, who merely has faculties from his own superior may not validly hear confessions on board ship, except in the ease of persons *in pericido mortis* and of those who are subjects of the religious superior.

(ii) Canon 883, §2, extends the faculty of hearing confessions to include those penitents who approach the voyaging priest whilst he is incidentally on shore at a port of call. The meaning of "obiter" is clarified by a decision of the *Code Commission,* 20 May, 1923, ad iv, in the sense that he may not hear confessions in these circumstances beyond a period of three days if the local Ordinary can easily be reached; the same reply decided that the faculties could validly be used ashore, whether the priest was returning to the same ship from which he disembarked or was waiting at the port for another ship.

190.—Meaning of Sea Voyage

Can it be safely held that the seajourney from England to Ireland, e.g. from Liverpool or Holyhead to Dublin, suffices for the purpose of receiving confessional faculties lla here" in the sense of canon 883 ?

This interpretation can safely be held, since the law does not determine the length of the voyage. From canon 200, §1, the faculty is of strict interpretation and cannot, therefore, be obtained by those who arc in a boat on the sea for some purpose other than making a journey, e.g. fishing, even though they spend several hours or even days in this pursuit. Thus Vermeersch-Crcuscn, *Epitome,* II, §153: "Maritimum iter dicit plus quam maritimam quamdam ambulationem qua, recreationis vel piscationis causa, quispiam per aliquot horas a portu solvit." Nor can it apply, with certainty, to a journey across the mouth of a river. Chretien, *De Poenitentia,* p. 363 : "An *mare* late intelligendum sit etiam de canalibus marinis vcl de ore fluminum, v.g. canal de Corinthe, canal de Suez, Garonne depuis Bordeaux, Escaut depuis Anvers, non constat." We think that canon 209 could be used in order to obtain jurisdiction in all these doubtful cases.

But there is no doubt at all concerning the sea voyage between England and Ireland. The best and fullest commentary' on this useful canon is that given by Fr. Berutti in *Jus Pontificium,* 1934, pp. 61-66, in the course of which the point raised is defined as follows: "Facultates de quibus in can. 883 .. . omnibus ct singulis sacerdotibus competunt qui qualibet ex causa (etiam solummodo ad animi solatium et forte absque licentia Superioris) iter maritimum reapse perficiant: dummodo utique aliqua jurisdictione audiendarum confessionum iidem actu potiantur, ad normam in can. 885, §1, praestitutam. Iter maritimum perficere ii dici non possunt, qui diutius quoque—forte etiam per unum vel plurcs integros dies—in mari vagantur, quin tamen proprie ex uno ad alium terminum terrestrem praefinitum se

transferant per mare, saltem ad brevissimum tempus: minime enim excluditur iter, quod arripiatur cum intentione statim redeundi ad cumdem locum ex quo discessus fit."

As supporting the above interpretation, it will be found that the Holy See, in granting special faculties to priest pilgrims going to Lourdes or Loretto, takes for granted the application of canon 883, no matter how short the sea journey may be, and extends the faculties beyond the limits of the canon.

191.—Faculties in Aeroplanes

May it be held that the faculties conceded "a fare" in canon 883, *"Sacerdotes omnes maritimum iter arripientes . . apply also to a journey across the sea not in a ship but in an aeroplane ?*

Canon 20: Si certa de re desit expressum prasescriptum legis sive generalis sive particularis, norma sumenda est, nisi agatur de poenis applicandis, a legibus latis in similibus; a generalibus iuris principiis cum aequitate canonica servatis; a stylo et praxi Curiae Romanae; a communi constantique sententia doctorum.

Canon 883 codifies and extends a concession which was first given by the *Holy Office, i-j* May, 1869,[1] long before aeroplanes were thought of. We arc of the opinion that the point is covered by the first part of canon 20, and that, if the other conditions are verified, faculties arc delegated *a fare* to a priest travelling across the sea in an aeroplane exactly as they arc to a priest voyaging in a ship. The canon refers, in the last clause, to the common opinion of experts, but we have been able to trace only two who deal expressly with the question, and unhappily they do not agree: Chretien, *De Poenitentia,* 1935, p. 363, holds that faculties are enjoyed as in a ship: "Quid de machinis in acre volantibus (avions) ? Deficiente dispositione positiva Ecclesiae, nostro sensu distinguendum est: in itinere supra terras sacerdos iurisdictione gaudet sicut in curru viae ferratae; in itinere supra mare, sicui in navi ad normam canonis 885. Cf. can. 20." Tummolo-Iorio, *Theol. Moralis,* II (1935), §545, teaches that canon 883 cannot be applied; but he takes the gloomy view of the prospects of anyone travelling by air and permits the application of canon 882 (in periculo mortis).

Whatever doubt there may be is removed by the application of canon 209—jurisdiction is at least supplied "in dubio positivo et probabili sive iuris sive facti".

192.—Faculties in Wartime

Can it be held, during war, that everyone in the country is in danger of death from air raids, and therefore that every priest has faculties to absolve them in the internal forum from all sins and censures?

Canon 882: In periculo mortis omnes sacerdotes, licet ad confessiones

[1] *pontes,* n. 1009.

non approbati, valide et licite absolvunt quoslibet pocnitcntcs a quibusvis peccatis aut censuris, quantumvis reservatis et notoriis, etiamsi praesens sit sacerdos approbatus, salvo praescripto can. 884, 2252.

5. O/., 15 September, 1859; *Fontes,* n. <>55, ad 1: Λ probatis auctoribus iudicandi normam sumat (Archiepiscopus) quibus in casibus revera dici possint poenitentes versari in articulo vel periculo mortis. . . .

(i) The familiar rule authorizing any priest to absolve persons approaching death, restricted by the Council of Trent to those "in articulo mortis",[1] was soon extended to people "in periculo mortis" and stands thus in our present law. The difference between the two is that, in the first, death is practically certain, whereas in the second there is merely a prudent fear that it might happen. The teaching of approved authors notwithstanding, it will often be doubtful whether a penitent's condition places him *in periculo mortis,* in which case the defect of jurisdiction, if any, is supplied from canon 209. If, however, it should transpire that the person was certainly not in danger of death, i.e. that a judgement to that effect was imprudent and precipitate, absolution will be valid only on a title of "common error". For "danger of death" is a fact which has to be verified before jurisdiction is supplied by the Church.

(ii) One of the commonest situations, mentioned by all the writers, is the case of the armed forces mobilized for war. Thus, in the previous war, the *Sacred Penitentiary* reaffirmed, z9 May, 1915, that these troops could be absolved by any priest, the assumption being that they were liable at any moment to be engaged in battle, and many other equivalent decisions were given by the Holy See. This well-established common law was recorded, at the outbreak of the present war, in the army chaplain's faculties granted 8 December, 1939, and it has been liberally extended in various directions. There is no particular difficulty in the case of the armed forces, since whatever doubts there may be about the common law "in periculo mortis" are removed by the delegated faculties possessed by army chaplains.

(iii) But there is some obscurity about the civil population. For the approved authors have not previously contemplated a situation in which, to use the common expression, the whole population of a country is in the front line. Moreover, unfortunately, we are denied during war the commentaries of these authors in the current Roman periodicals, and, having no certain means of discovering what their teaching is, we are left to our own slender resources. We would not, therefore, criticize any priest who gives an affirmative answer to the above question; it is a matter for his own judgement, for it is at least doubtful whether the conditions arc verified or not.

(iv) The reason why we are, personally, unable to give, without any qualification, an affirmative answer may be stated as follows. It would, firstly, appear far too sweeping to regard every man, woman and child, in every country at war, as being "in periculo mortis"; many places have never experienced an air raid, and arc not very likely to; danger of death from traffic is, perhaps, just as imminent, and no one would regard this as included in canon 882. Moreover, rather complicated faculties have been given for non-fasting Communion which would be unnecessary', from canon 858, §1, if we arc all in danger of death within the meaning of the law; other faculties,

» Scss., XIV, cap. vii.

for example those given to interned priests to absolve fellow-prisoners, would likewise be so much waste paper if they enjoy these faculties already *a sure* from canon 882.

We are of the opinion, therefore, without prejudice to the liberty conceded in (iii), that it is not possible to give an unqualified affirmative answer to the question. There are times and places, for example, during an actual bombardment, when the conditions for the application of canon 882 are certainly present, as the faculties given 8 December, 1939, explicitly state: "instante mortis periculo durantibus praefatis incursionibus" ; the same could, no doubt, prudently be said of any town, such as Dover, which is habitually subject to bombing, and of any place from the moment air raid warning has been given. But it cannot, we think, be said indiscriminately of the whole country.

193.—Supplied Jurisdiction

Ij somejust cause necessary before one can invoke tbe title ofsuppliedjurisdiction in canon 209 ?

Canon 209: In errore communi aut in dubio positivo et probabili sive iuris sive facti, iurisdictionem supplet Ecclesia pro foro tum externo, tum interno.

(i) The canon provides a written law for what previously was largely a matter of custom or interpretation. There is no question of the validity of absolution given with supplied jurisdiction within the terms of the canon; nor does the question of lawfulness arise when coming to a decision about an action already performed in good faith. But in deciding, before the event, whether one is entitled lawfully to give absolution with the supplied jurisdiction of canon 209, the point at issue is whether some just cause is or is not necessary. In the case of common error the writers are agreed that a just cause is required: Cappello, *De Poenitentia,* §493; Noldin, *Theol. Moralis,* III, §347.

(ii) In the case of positive and probable doubt our own preference is for the necessity of some justifying cause, following St. Alphonsus, *Theol. Moralis,* VI, §573; Wouters, *Theol. Moralis,* I, §104. Others, as Tanquerey, *Theol. Moralis,* I, §431, require a just cause "in dubio facti" but not "in dubio iuris". The reason for our preference, notwithstanding the fact that the Code makes no mention of the necessity of a just cause, is that the Church is not presumed to supply jurisdiction *ad liceitatem* unless there is some reason for so doing.

(iii) But the opposite and more liberal view which requires, indeed, a just cause for invoking common error, but not in cases of positive and probable doubt, is very widely held, though no very satisfactory reason is given for distinguishing between the two cases. Cf. Cappello, *De Poenitentia,* §499; Tummolo-Iorio, *Theol. Moralis,* II, §542; Noldin, *Theol. Moralis,* III, §547. This teaching may certainly be followed. Gougnard, *De Poenitentia,* 1939, p. 268, and Prümmer, *Theol. Moralis,* III, §414, whilst holding that no just cause is required, recommend that certain jurisdiction should be obtained from the ordinary channels as soon as possible.

194.—Faculties in Common Error

A priest in a country occupied by anti-Catholicsforces takes refuge in a place outside bis own diocese. There he gathers Catholics for Mass and tbe sacraments. After some time be realises that he has nofaculties in that place, and wonders whether he may continue to give absolution, since it is impossible for him to get in touch with the local Ordinary.

(i) If he is a *parochus* he may, from canon 881, §2, continue to absolve those of his parishioners who have fled with him into the neighbouring diocese.

Moreover, the state of the country may be such that all the inhabitants are reckoned to be *in periculo mortis,* and may be absolved by any priest in virtue of canon 882.

(ii) When neither of the above titles actually exists it is clearly necessary to exercise all one's ingenuity to discover another one. Precisely in order to meet the needs of the faithful the Holy Sec has given faculties to all interned priests,[1] but we arc not aware of any similar faculty granted to cover the above emergency. Accordingly, we must have recourse to the title of *common error* in canon 209, and though none of the authors we have consulted has the above difficulty in mind, it will be seen from the following quotations that the priest may lawfully and validly claim jurisdiction on this ground, even though he himself is quite aware that he is lacking it from the usual channels.

Cappello, *De Poenitentia,* §492: "Stante errore communi, Ecclesia supplet etiam si sacerdos probe cognoscat se iurisdictione carere, quia non in cius favorem, sed in communem utilitatem fidelium ipsa supplet in casu."

Chrétien, *De Poenitentia,* §224: "Si autem mala fide absolvat, i.c. cum conscientia se non habere iurisdictionem, de se graviter peccat, praesertim si se fingat approbatum et errorem communem provocet. Attamen a gravi peccato excusatur ob gravem causam. . .

Berutti in *Jus Pontificium,* 1934, p. 61: ". . . ii quoque, qui forte ceno sciant quod in confessario iurisdictio solummodo ab Ecclesia suppletur ratione erroris communis, ab ipso absolutionem valide impetrare possunt, si sint rite dispositi; manifestum est autem quod iidem illicite absolutionem ab eo peterent, si absque vera seu gravi necessitate id facerent."

Periodica, 1928, p. 91, applies this doctrine to the case of a missioncr for whom the parish priest has forgotten to secure faculties.

(iii) There is a wide field of doubt, both of law and fact, in deciding that the conditions for *common error* are verified, but whatever doubt there may be is removed by the same friendly canon 209. We think that it is scarcely conceivable that *common error* can be absent in the case of a priest in the situation described by our correspondent.

But it is not absolutely inconceivable. Imagine, if you like, a number of refugee theologians accompanying a priest, all of them well aware that he has no jurisdiction, and no other persons present. There cannot possibly be *common error* in such a case, and it is impossible to detect any title to jurisdiction apart from that given in danger of death. The necessity of the power of jurisdiction, in addition to that of orders, is *iure divino,* and

15. *Poenit.,* 22 February, 1941.

not merely an ecclesiastical requirement which one might consider as being inoperative in urgent necessity. This company, so far as absolution is concerned, is in the same position as a body of the faithful without a priest at all: they would have to be content with an act of perfect contrition.

195.—Army Chaplains Absolving Civilians

May it not be held, from n. 13 of the faculties issued to chaplains, that civilians in this country may validly and lawfully be absolved by them, even though they possess no faculties from the local Ordinary?

S.C. Consist., 8 December, 1939: Excipiendi sacramentales confessiones omnium fidelium, qui in exercitu militant vel exercitui quovis modo sunt addicti ... et, in locis bellici territorii tantummodo, omnium fidelium ad se accedentium. . . .

T. *Pocnit.,* 4 December, 1915: . . . declarat praedictas facultates in illis locis territorii bellici (vulgo *%ona di guerra)* tantummodo adhiberi posse, in quibus difficile sit fidelibus pro sacramentali confessione peragenda recurrere ad sacerdotes adprobatos a locorum Ordinariis, simulque sacerdotibus ad exercitum pertinentibus eosdem Ordinarios adire ad adprobationcm obtinendam. . . .

(i) If the very liberal view is held that all the population of every country at war is *in periculo mortis,* any priest can absolve them, whether an army chaplain or not, whether possessing faculties from an Ordinary or not, from the common law of canons 882, 892, §2, and 2252; we are reminded of this fact in n. 14 of the faculties issued from *S.C. Consist.,* 8 December, 1939. We do not hold the view, without many reservations, that the whole population of England, Wales, and Scotland is in danger of death at all times during the war. Cf. Q. 192.

(ii) zXssuming they arc not in danger of death, chaplains may, from n. 13 of their faculties, validly and lawfully absolve all civilians in these islands, provided that the locality in which the confession is heard can be described as "in locis bellici territorii". A similar phrase was used by the *Sacred Penitentiary,* 4 December 1915,1η the previous war, but with a further reservation that neither the faithful nor the chaplain confessor were able to observe the ordinary practice. This limitation does not occur in the present faculties, and though it is a useful clause to bear in mind, as will be noted in (iii) wc need consider only the phrase "in locis bellici territorii". Cf. *Nouvelle Revue Théologique,* September, 1959, p. 968. The words certainly apply to places like North Africa and Holland during the course of fighting in those territories, and some may think, as they are entitled to do, that England, Wales, and Scotland are included, owing to the possibility of air warfare breaking out at any time over these territories. In the actual course of an air raid the point is irrelevant, since all priests have faculties from the common law *in periculo mortis.*

At other times, we cannot agree that the whole country' is "in locis bellici territorii". For the faculty in n. 13 is sharply distinguished from that in n. 14, and the point of it is that civilians living in a country' which is the scene of military operations, even though not themselves in danger of death, arc subject to so many restrictions and inconveniences that the

ordinary rules about confessional jurisdiction are to be suspended in their regard for the time being. The phrase would certainly apply to those areas, such as certain coastal towns, which arc practically under military law so far as the movements of the civilians are concerned. But it could not, wc think, be applied unreservedly to the whole country.

(iii) Priests are entitled to take a more liberal view, if they wish, for the faculty in n. 15 is not restricted in its wording.

In our view, the best solution is to regard the point discussed in (ii) as a *dubium iuris,* to be interpreted as in Q. 193 (ii). There is, indeed, authority for using the supplied jurisdiction of canon 209 without any special cause, but the safest course is to use this jurisdiction only in the circumstances mentioned in J. *Poenit,* 4 December, 1915.

The above solution is given without prejudice to instructions which may have been issued to certain chaplains by their own military' superiors.

In order to remove all uncertainty, the Belgian bishops declared in 1939 that all priests in the army could absolve civilians anywhere in Belgium provided they were in possession of faculties from some Ordinary.

196.—Army Chaplains Absolving Priests

In most English dioceses the clergy are empowered by the local Ordinary to communicatefaculties to a priest belonging to another diocese, and holdingfaculties therein, for the purpose ofbearing their own confessions. If a priest of diocese ".-1" *becomes an army chaplain, with facultiesfrom the army Ordinary, but ceases to hold diocesan faculties in diocese "A", may a priest in diocese "B", relying on the above concession, validly and lawfully confess to the chaplain ?*

(i) This concession to communicate faculties varies in different dioceses. Thus *Liverpool Synod,* 1934, n. 131: "Sacerdotes cuiusvis dioecesis provinciae Liverpolitanae et dioecesis Salopiensis, pro confessionibus approbati, iurisdictione in hac dioecesi pro confessionibus sacerdotum huius dioecesis, pollent". *Middlesbrough Decrees,* 1933, η. 119, and *Lancaster Statuta,* 1935, η. 99 : "We hereby grant faculties to any priest of another diocese in England, holding faculties in his own diocese, to absolve any priest, his servants and teachers, on occasion of a visit to this diocese". *Westminster* has a similar faculty extended to Welsh priests, promulgated each year in the Ordo. In *Liverpool,* it will be noticed, the concession is more restricted than in the other dioceses mentioned.

(ii) If the phrase in the chaplains' faculties, n. 13, which authorizes them to absolve all civilians "in locis bellici territorii", is liberally interpreted, the question does not arise: a priest penitent will be in the same condition as any of the faithful. Cf. Q. 195.

(iii) Assuming, however, that the chaplain's faculty, n. 15, is not universally applicable in these islands at the present time, we think that the faculties mentioned in (i) may be used, within the territorial limits indicated in each, even though the chaplain ceases to hold diocesan faculties from his own local Ordinary. Thus faculties may be communicated by' a Liverpool priest to a chaplain who used to enjoy faculties in any diocese of the Liverpool Province or in the diocese of Shrewsbury; by' Middlesbrough and Lancaster priests to one similarly approved in any English diocese; be

Westminster priests to one approved in England and Wales. This view is, we think, properly deduced from canon i8: "Leges ecclesiasticae intclligendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos Codicis parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum." Whatever doubt exists on the correctness of this interpretation will be covered by canon 209.

197.—Faculties of Suspended Priest

What is the effect of suspension with regard to the validity of an absolution, given by a priest who has incurred a censure of suspension and who, at the same time, is bound to hear confessions by reason of his parochial office ?

Putting aside as irrelevant a discussion of the conditions necessary before the censure of suspension can be incurred, and putting aside also the details of interpretation in such a suspension as that incurred in England by going to theatres, we will suppose that a censure (not a vindicative punishment) of suspension "a divinis" has been incurred *latae sententiae* by a priest engaged in parochial work; that the law does not expressly state that the power of valid confessional jurisdiction is withdrawn by the suspension; and that there has been no subsequent condemnatory or declaratory sentence by the Ordinary.

Canon 2278: "Suspensio est censura qua clericus officio vel beneficio vel utroque prohibetur." As the canon indicates, the prohibition may be general or partial. The term "suspensio a divinis" implies a partial prohibition; the suspended priest retains the use of his benefice but is prohibited from using the sacred powers conferred upon him by ordination: he may neither say Mass nor administer the sacraments, including the sacrament of Penance, since the grant of absolution is an exercise of the power of Orders as well as of jurisdiction.

Unlike excommunication, however, suspension docs not deprive the censured person from receiving the sacraments. If he is otherwise rightly disposed he may be absolved from his sins, including the sin for which the censure has been incurred, and he may receive Holy Communion. Moreover, he may be absolved from the suspension itself, from canon 2254, §1, with the obligation of having recourse to the competent superior within a month, under pain of reincurring it. This canon is more often applied to excommunicated persons but it can certainly be used with regard to suspensions *latae sententiae* ". . . si, nempe, censurae latae sententiae exterius servari nequeunt sine periculo gravis scandali vel infamiae. . . ."

Supposing he is alone and cannot reach a confessor, the situation is met by the following canons:

Canon 2232: Poena latae sententiae, sive medicinalis sive vindicativa, delinquentem qui delicti sibi sit conscius, ipso facto in utroque foro tenet; ante sententiam tamen declaratoriam a poena observanda delinquens excusatur quoties eam servare sine infamia nequit, et in foro externo ab eo eiusdem poenae observantiam exigere nemo potest, nisi delictum sit notorium firmo praescripto canon 2223, §4.

Canon 2284: Si incursa fuerit censura suspensionis quae vetat adminis-

trationcm Sacramentorum et Sacramentalium, servetur praesciptum can. 2261; si censura suspensionis quae prohibet actum jurisdictionis in foro seu interno seu externo, actus est invalidus, ex. gr. absolutio sacramentalis, si lata sit sententia condcmnatoria vel declaratoria, aut Superior exoresse declaret se ipsam jurisdictionis potestatem revocare; secus est illicitus tantum nisi a fidelibus petitus fuerit ad normam mem. can. 2261, §z.

Canon 2261, §2: Fideles, salvo praescripto '2, possunt ex qualibet justa causa ab excommunicato Sacramenta et Sacramentalia petere, maxime si alii ministri desint, et tunc excommunicatus requisitus potest eadem ministrare neque ulla tenetur obligatione causam a requirente percontandi.

§5. Sed ab excommunicatis vitandis nccnon ab aliis excommunicatis, postquam intercessit sententia condcmnatoria aut declaratoria, fideles in solo mortis periculo possunt petere tum absolutionem sacramentalcm ad normam cann. 882, 2252, tum etiam, si alii desint ministri, cetera Sacramenta et Sacramentalia.

198.—Jurisdiction of Orthodox Priests

17 *is well understood that the priests belonging to separated Eastern Churches inasmuch as they are validly ordained, administer valid sacraments. In those sacraments for which no jurisdiction is required this can be readily perceived, but it is difficult to understand how their absolutions can be valid, since, being separated from the unity of the Church, they appear to lack the necessary jurisdiction.*

The principle underlying this question is unassailable, namely: "Praeter potestatem ordinis, ad validam peccatorum absolutionem requiritur in ministro potestas jurisdictionis, sive ordinaria sive delegata, in poenitentem." This rule of canon 872 is much more than an ecclesiastical law; it is founded on the nature of the sacrament of Penance which was instituted by Christ in a judicial form. "Quoniam igitur natura et ratio judicii illud exposcit ut sententia in subditos dumtaxat feratur, persuasum semper in Ecclesia Dei fuit, et verissimum esse synodus haec confirmat nullius momenti eam esse debere, quam sacerdos in cum profert, in quem ordinariam aut subdelegatam non habet jurisdictionem."[1] Therefore, if the absolutions in question are valid, and the whole trend of this reply will be to show that they arc, their validity is due to the fact that the absolving priest enjoys jurisdiction granted to him, in some way or other, by the Church.

(i) It is granted, to take one well-known instance, "in periculo mortis" to every priest; any priest validly absolves from all sins and censures in the hour of death, not because absolution is valid without jurisdiction in such cases, but because the Church expressly concedes the faculty to those priests who may not habitually possess it.

Further, it has appeared to many that, outside the danger of death, these absolutions arc valid, because jurisdiction is supplied by the Church on the ordinary title of "common error" (canon 209). On this hypothesis the Eastern schismatic priest docs not habitually enjoy jurisdiction. He possesses it merely "per modum actus" on the occasion of giving absolution, provided that the rather intricate conditions for invoking the title of "common error" arc present in each case.

[1] *Cone. Trid.,* Scss. XIV, cap. 7.

Against this view, which is simple and easy to understand, it must be pointed out, we think, that the title of "common error" is a familiar notion in Western canon law, but we cannot conclude straightway that the title has an equal validity in Oriental canon law. On the contrary, the first canon of the Code expressly excludes the Oriental Church from the provisions of the Code "nisi de iis agatur, quae ex ipsa rei natura etiam Orientalem (Ecclesiam) afficiunt". Probably this title is as valid in the East as in the West. Probably, too, the terms of the first canon of the Code allow us to conclude that this portion of Western canon law applies also to the East. Even granted that the validity of this title is beyond dispute amongst Oriental Christians, the most it offers is a supplied jurisdiction granted, for grave reasons affecting the common good, to each individual priestly absolution, whenever the requisite canonical conditions are present.

(ii) May we say more than this ? May the proposition be defended that the priests of the schismatic Oriental Churches possess true habitual jurisdiction, and that there is, consequently, no need to invoke any fortuitous title of supplied jurisdiction, whether in the hour of death or in "common error" ? Many theologians and canonists in the past have been distinctly adverse to any admission of this kind, but the view which predominates nowadays is in favour of upholding the proposition as just stated.

One way of proving its truth is by showing that the priests of the schismatic Oriental Churches are not really excommunicated, since they are not guilty of formal heresy or schism, nor have they' sufficient knowledge for incurring censures even if they are formally guilty. This method of demonstration involves us in all the tortuous paths of the treatise on censures, and there is, in addition, the radical objection that we have no right to assume that our laws concerning censures are to be applied to Oriental Christians.[1]

A far better line of argument is to hold, with recent writers, that Oriental schismatic priests enjoy jurisdiction for absolving from sins, because the Church, for the gravest reasons affecting the salvation of souls, has not withdrawn the necessary jurisdiction from them. This seems rather a sweeping statement, at first sight, but it is strongly supported by two arguments which, though indirect, have nevertheless very great force.

The first is drawn from the universal practice observed in reconciling Oriental schismatics to the Church. The rule, very familiar to us in reconciling non-Catholics, requires a general confession from the newly reconciled person, the reason being that every post-baptismal sin must be absolved by *direct* absolution. Now, it is not the practice of the Church to demand a general confession from these schismatics when they are reconciled, the inference being that their previous confessions arc valid.

The second argument is concerned with the Oriental practice of priests administering the sacrament of Confirmation immediately after Baptism. The Church rarely re-confirms converts from schismatic bodies who have already been confirmed in infancy. There is required, indeed, a special act of the sovereign Pontiff to enable a simple priest to act as the extraordinary minister of this sacrament; or, at least, it is essential that the powers used by Oriental priests from time immemorial have not been expressly withdrawn. The point is elucidated in a rescript from the *Holy Office*, 5 July, 1853: "Non expedire quod confirmati a sacerdotibus schismaticis denuo liniantur

[1] Cf. *Ecbof d'Oricnt,* 1927, pp. 585-590.

post reditum ad unitatem; et ad mentem: La menteè chc nci casi particolari s'informi il Vescovo del luogo prcciso ove i convcrtiti furono crcsimati. Che se fosse in Bulgaria od in Cipro . . . o in altro luogo ove espressamente sia revocata tal facoltà, debba riconfermarli *absolute.* Se in Valachia . . . o in altri luoghi in cui non fu espressamente nvocata, *acquiescat."*^ Thus the Church considers schismatical confirmation by a simple priest to be valid in those places where his powers have not been withdrawn. The argument is that if the Church has not withdrawn from schismatical priests their power to confirm, it follows that their power to grant absolution has not been withdrawn either; for the latter is more necessary for souls than the former.2

These schismatical priests accordingly draw their jurisdiction from the Church, through their bishops and patriarchs, exactly as they did before the schism. The Church has not wished to deprive them of jurisdiction for the greater good of souls, and one can discover no act on the part of the authority of the Church which can be interpreted as a deprivation of those powers. There is no real objection to this doctrine in the fact that Catholics arc forbidden to receive absolution from schismatical priests; it is forbidden because it is an act of *communicatio in sacris* with schismatics, not because the absolution would be invalid.

To sum up what has been said: it seems better to hold that Oriental schismatics retain their jurisdiction, because the Church has never expressly withdrawn it, rather than to rely on a title of "common error". This is the conclusion of so well known an authority as Maroto: "Tandem, certum est, uti jam ab antiquo in S. Otficio receptum fuit, quod schismatici Orientales, qui pariter ut scimus, non ex uno tantum capite haeretici sunt et quidem notorii, retinent veram jurisdictionem ita ut valide sacerdotes a competentibus superioribus approbati, absolvant, valide parochi et Ordinarii adsistant matrimoniis et ita porro. Haec, si subtiliores explicationes quae necessariae certe non videntur, excludamus, suadent non jure divino, sed humano a quo in quibusdam casibus propter bonum publicum prudenter dispensentur, haereticos et schismaticos etiam notorios, jurisdictionem sive delegatam sive etiam ordinariam retinere et exercere posse."3 In addition to the references given cf. *Irénikon,* 1928, p. 142; Souarn, *Memento de Théologie Morale,* p. 134; *N.K.S.,* 1927, p. 354, analysed in *Jas Pontificiam,* 1929, p. 232.

§2. CONFESSIONS OF RELIGIOUS

199.—Ordinary Confessor

A priest who is appointed to hear the confessions of novices in a religious house never, as a matter offact, hears the confessions of the same religionsfor more than two years, since they are continually changing. Would it not, therefore, seem that the law requiring him to be changed every threeyears does not apply in this case?

1Fontes, n. 924.
11'Ami du Clergi, 1927, p, 569.
• *Institutiones luris Canonici,* I, §376, p. 671,

It is held by many of the commentators on canon 526 that the triennial change is not strictly required in the case of the ordinary confessor of novices, for the reason suggested in the question. The purpose of the law is to secure that the religious shall have a change, and normally this is done by changing the confessor: he may continue to act as a confessor to some other community. Hence it appears reasonable that he should continue to act as ordinary confessor for successive groups of novices.[1] The confessor can continue validly in his office, but we agree, nevertheless, with Sobradillo: "Non desunt auctores opinantes praescriptum in can. 526 non afficere confessarium ordinarium pro *solis* novitiis deputatum, eo quod hae ordinarie singulis annis mutationi sint obnoxiae; existimamus tamen curandum esse nc huiusmodi confessarius, nisi justae causae aliter suadeant, per diuturnum tempus in munere permaneat, nc abusus ex parte ipsius confessarii facile oriantur; immo credimus magis congruere cum disciplina ecclesiastica ut huiusmodi confessarius singulis triennis mutetur. . . ,"[2]

The ordinary confessor of a community being absent, through illness, the superior of the community requested the extraordinary confessor to visit the house instead of the ordinary. Is this permitted? If not, who should lawfully take the place of the absent ordinary?

The Code does not explicitly make any provision for a confessor to take the place of the ordinary who may be prevented from fulfilling his office. But there should normally be a number of supplementary confessors within reach of the community, and one of these may be invited to hear the confessions of the community in these circumstances. Canon 521,§1 : "Ordinarii locorum, in quibus religiosarum communitates existunt, aliquot sacerdotes pro singulis domibus designent, ad quos pro sacramento poenitentiae in casibus particularibus recurrere eae facile possint, quin necessarium sit ipsum Ordinarium toties quoties adire." These supplementary confessors may be summoned, in a particular case, for the benefit of the whole community.[3] The extraordinary is not permitted to take the place of the ordinary as such, but canon 521, §1, directs his visits to take place four times a year *at least,* and as many as six times may be permitted. He may, therefore, visit the house once or twice as the extraordinary confessor in the circumstances of this question.

Can the ordinary confessor validly continue, after three years, without being explicitly appointed again ?

He continues to hear confessions validly but unlawfully after the lapse of the appointed time.[4] In fact, it is scarcely possible for the confessions of religious to be invalid, owing to the non-observance of the law, since the confessor, whether ordinary, extraordinary or supplementary, will usually

1 This interpretation is given, amongst others, by Wemz-Vidal, *lus Canonicum,* III, §172, and *l'Ami du Clergé,* 1953» P· 572·

* *De Religiosarum Confessoriis,* p. 179.

* Cf. Q. 201

4 Cf. Wemz-Vidal, *toc. cit.,* and canon 207, §2.

be in possession of the faculties given to all approved confessors from canon 522.

200.—Extraordinary Coniessor

An extraordinary confessor, visiting the convent io which he is appointed four times a year, finds that certain members of the community do not make their confession to him. Is it not the law that they are bound to do so, and, if so, what steps should he take in the matter?

Canon 521, §1: Unicuique religiosarum communitati detur confessarius extraordinarius qui quater saltem in anno ad domum religiosam accedat et cui omnes religiosae se sistere debent, saltem benedictionem recepturae.

By this law, all the religious, including their superior, are bound to present themselves before the extraordinary confessor, but they are not bound to confess their sins to him, unless they wish to do so.

The regulation, which goes back to the Council of Trent, has for its purpose to safeguard peace of conscience amongst the religious. Benedict XIV, in explaining the law, points out that if some visited this confessor, and others did nor, it might result in certain suspicions and undesirable comparisons.[1] It is quite certain that all are bound to obey the law. But whether the matter is of such moment that the confessor should take steps to secure its observance must be left to his discretion. *PAmi du Clergé* advises the confessor to bring the matter to the notice of the Ordinary,[2] and there may be circumstances in which this course is to be followed. But, in our opinion, the confessor is not bound to take on himself this rather onerous task, unless he knows that some harm is resulting to the community from the non-observance of the law. Probably it would suffice to discuss the matter with the local superior: more likely than not the religious, who do not present themselves, know that they are not bound to confess to the extraordinary confessor and wrongly conclude that they need not appear at all.

201.—Supplementary Confessor

From canon 521, §2, *in addition to the ordinary and extraordinary confessors, local Ordinaries should appoint certain confessors for each religious house who ar·, to hold themselves ready to hear confessions "in casibus particularibus", if requested to do so. Does the phrase "a particular case" refer to circumstances in which the whole community desire his sen ices, for example, because of the indisposition of the ordinary confessor?*

The formula employed in the wording of the canon is taken, with a few changes, from the decree *Cum de Sacram:ntalibus,* 5 February, 1915. The earlier decree *Quemadmodum,* 17 December, 1890, had "ut propriae conscientiae consuleret", which was explained as follows: 'Moneat Ordinarius moniales et sorores de quibus agitur, dispositionem articuli IV Decreti *Quemadmodum,* exceptionem tantum legi communi constituere pro casibus

1 Cf. Sobradillo, *De Religiosarum Confessoriis,* p. 148.

* 1927» P· 6J5·

dumtaxat verae et absolutae necessitatis."[1] Therefore, if the law is regarded in its historical sources, it is fairly clear that, in these documents, the Church had in mind the ease of a particular nun who, for a just cause, desired one of the special supplementary confessors. The motive, also, of the legislator, supports this view, namely the suppression of abuses on the part of religious superiors who were sometimes inclined to forbid Holy Communion to individual subjects whom they judged unfit.

Nevertheless, the text of the canon makes no distinction between individuals and the community. We may therefore conclude that these confessors may validly and lawfully use their special faculties, when requested, for the benefit of the whole community, provided they do not do so habitually. The habitual use of these faculties would make the supplementary' confessor, in effect, an ordinary confessor, and for this office special permission is required. This is the solution given, amongst other authors, by Sobradillo, *De Religiosarum Confessionibus,* p. 159, and Cappello *De Poenitentia,* §468; cf. the authorities cited for both interpretations in *Collationes Brugenses,* 1925, p. 471. Pending any official solution the liberal interpretation may safely be followed.

202.—Gravely Sick Religious

The junior assistant priest of this parish says Mass at a large convent of nnns and takes Holy Communion to those who are sick in the infirmary. May he, if requested by a nnn to do so, "ad quietem conscientiae," hear a confession in the infirmary?

If the penitent is *in periculo mortis,* any priest may hear her confession, even though he is not approved by the local Ordinary, or by any Ordinary. This well-known rule of canon 882 certainly applies to nuns: they are included in "quoslibet pocnitentcs", although canon 876, which enumerates the exceptions to the law requiring specially approved confessors for nuns, makes no mention of *in periculo mortis.*

But canon 523 provides especially for sick nuns: "Religiosae omnes cum graviter aegrotant, licet mortis periculum absit, quemlibet sacerdotem ad mulierum confessiones excipiendas approbatum, etsi non destinatum religiosis arcessere possunt eique, perdurante gravi infirmitate, quoties voluerint, confiteri, nec Antistita potest eas sive directe sive indirecte prohibere." The canon repeats, with the exception of the last few words, a law of 1915, and it calls for some little comment. It is essential that the priest should be approved for women's confessions, whereas "in periculo mortis" this is not necessary. In this country', owing to the comparative scarcity of priests, approbation is not commonly restricted in any way, and faculties arc usually given for all the faithful.

From the nature of the case, doubt often arises in determining the meaning of "cum gi . iter aegrotant". Some are, perhaps, rather too exacting in estimating the meaning of "grave". A writer in *jtts Pontificium* states: "Si vero periculum mortis absit quidem actu, sed facile induci potest aut ratione qualitatis infirmitatis, aut ratione diuturni temporis ex quo aegrotus infirmitate jam detinetur, idem infirmus graviter aegrotare dicitur."[2] The

[*] *Fontes,* nn. 2017 and 2019.

[2] »9)3. P· 73·

generality of authors consulted require much less than this degree of gravity, in order to use the privilege of canon 523; the official English translation reads "seriously ill", which appears to be something less than the English "gravely ill". Crcusen writes: "On peut considérer comme grave toute maladie qui, de sa nature ou à cause des circonstances spéciales, affaiblit considérablement les forces du malade."[1] A study of the subject, based on a wide reading of commentators concludes: "in genere dicere possumus aliquam religiosam graviter aegrotare, si infirmitate laborat quae eius saluti notabile detrimentum affert, v.g. si febri in lecto detinetur per aliquot dies, si operationem, licet non multo periculosum, subire debet vel debuit; non esset tamen, per sc loquendo, infirmitas gravis, v.g. catarrhus, capitis dolor, etc. Attamen si aliqua religiosa existimatur graviter aegrotare et postea comperitur infirmitatem non esse revera gravem, nihilominus confessio sacerdoti ad normam canon 523 forsitan peracta, fuit valida et licita".[2]

A generous and liberal interpretation commends itself as being in accordance with the mind of the legislator, for all the recent legislation has been in the direction of facilitating the choice of confessor on the part of nuns. If it is doubtful whether the illness is sufficiently grave, jurisdiction is supplied from canon 209. Superiors who place obstacles in the way of a subject wishing to use the privileges of this canon are liable to punishment as stated in canon 2414.

Owing to the liberal interpretation officially given to canon 522, the force of canon 523 is considerably weakened. Cf. Q. 204.

203.—Gravely Sick Religious: Approbation

Is it necessary for the confessor who may be asked in the circumstances of canon 523, to hear a confession, to possess faculties from the Ordinary of the place, or does it suffice if he is approved for women s confessions, though not in the place where the convent is situated? Also, is any farther permission required in order to enter a convent of cloistered religious?

Canon 523: Religiosae omnes, cum graviter aegrotant, licet mortis periculum absit, quemlibet sacerdotem ad mulierum confessiones excipiendas approbatum, etsi non destinatum religiosis, arcessere possunt eique, perdurante gravi infirmitate, quoties voluerint, confiteri, nec Antistita potest eas sive directe sive indirecte prohibere.

This canon, together with the other canons which extend the facilities of nuns, has given rise to many doubts, and all the official interpretations have been in a liberal direction.

(i) The question concerning the cloister has been settled by the Holy Sec: "Confessarius, vel qui cius vices gerit, potest, cum debitis cautelis, ingredi clausuram ad ministranda sacramenta infirmis aut ad assistendum morientibus. Haec facultas respicit confessarium ordinarium monasterii, vel qui cius vices gerit, quibus ex can. 514, §2, competit administratio et adsistentia morientibus in monasteriis monialium; in horum defectu alius etiam sacerdos clausuram ingredi potest.

"Ad excipiendas confessiones aegrotantium ingredi clausuram potest,

[1] *Religieux et Religieuses,* §96.
[2] Sobradillo, *De Religiosarum Confessoriis,* p. 232.

quoties requiratur, non solum confessarius ordinarius, sed etiam extraordinarius vel adjunctus aut confessarius quilibet a graviter aegrotante acccrsitus, de quo in can. 523 fit sermo."[1]

(ii) The doubt concerning the confessor's jurisdiction has not been officially decided, namely whether it is strictly necessary for him to be approved for the place in which the confession is heard. Many commentators do not advert to the difficulty; others simply assume that "approbatum ab ordinario loci" is evidently to be understood.[2] The reason for the doubt arises from comparing canon 522 with our canon 523 : canon 522 expressly mentions "ab ordinario loci", but canon 523 docs not.

Before coming to any judgement on the matter it may be noticed that an answer of the *Code Commission* has decided that "locum legitime destinatum" for a confession, under the law of canon 522, includes any place lawfully chosen "per modum actus" as in canon 910, §1. It would seem that this liberal official interpretation of the law of canon 522 adds some further weight to the opinion of the few writers who, with Marc-Gestermann, give a liberal interpretation to the point we are discussing in canon 523. For, unless the confessor of canon 523 is to be taken as *any* approved confessor, even though not approved by the Ordinary of the place, it is difficult now to see the force of canon 323. Following the recent official interpretation, a sick nun may confess in the infirmary "ad conscientiae tranquillitatem" to any confessor approved by the Ordinary of the place; if, in the still more pressing circumstances of grave illness, a confessor approved by the Ordinary of the place is necessary, it is difficult to see what concession is granted by canon 523 which is not contained now within canon 522.

The question, therefore, resolves itself into deciding whether, pending the resolution of the doubt, jurisdiction is supplied from canon 209 to a priest with faculties in another diocese to hear the confessions of a religious who is gravely ill, even though he possesses no faculties in the diocese in which the convent is situated.

For the view that canon 523, in so far as it may be thought to require a confessor approved by the local Ordinary' is a *dnbinm inris,* we rely on the authority of a certain number of authors:

(a) Wouters is mentioned as teaching this view in *N.K.S.,* 1918, p. 200. Woutcrs later records this view as being held by some, but dissociates himself from it in *Theol. Moralis,* II, §373.

(b) Raus, *Institnliones Canonicae,* §181: "a quolibet Ordinario."

(c) Marc-Gestcrmann, *Thcol. Moralis,* II, §1764: "licet plcrique auctores negent, sufficere jurisdictionem in alia dioecesi obtentam, idque propter can. 874, §1".

(d) Cappello, *De Poenitentia,* §456, docs not deal expressly with the point but this statement may be noted :

"Praescriptum can. 523 benigne seu late interpretandum est, perspecto fine legis. Nam pia mater Ecclesia vult religiosis filiis suis aegrotis maximam confitendi libertatem largiri, ut salus animarum efficacissime promoveatur."

(e) The Rcdcmptorist author, with whom a writer in *Periodica* disagrees,

15.C. 6 Feb., 1924, ad f & g.

1 E.g. Bht, *Avgtlicum,* 1935» p. 32, and most of the manualists

3 12 February, 1935.

4 1955» P· Io6·

regards the liberal view as more probable: "ipsum ut probabiliorem tenere sententiam quae admittit competentem esse in casu quemlibet sacerdotem ab aliquo Ordinario approbatum".

We do not hold it as more probable but we regard the point as a *dubium iiiris* calling for the application of canon 209.

204.—Sick Religious

Is it correct to bold that any priest with Jacidties from the local Ordinary for women s confessions may absolve a sick nun in the convent infirmary, even though she is not gravely ill? 1 have heard it maintained that, if she is not gravely ill, absolution given under canon 522 must be in a confessional to be valid.

Owing to the accumulation of official texts explaining this canon, we cannot print them here *in extenso.* Those not familiar with the question must observe that the law of canon 876, requiring special jurisdiction for the confessions of religious women, is modified in many directions: in danger of death (canon 882); in grave illness (canon 523); as a privilege of Cardinals (canon 239, §1.1); lastly, for the relief of conscience (canon 522).

Canon 522: "Si, non obstante praescripto cann. 520, 521, aliqua religiosa, ad suae conscientiae tranquillitatem, confessarium adeat ab Ordinario loci pro mulieribus approbatum, confessio in qualibet ecclesia vel oratorio etiam semi-publico peracta, valida et licita est, revocato quolibet contrario privilegio; neque Antistita id prohibere potest aut de ea re inquirere, ne indirecte quidem; et religiosae nihil Antistitate referre tenentur."

This canon has been officially explained by the *Code Commission* in liberal terms:

(i) Any place lawfully assigned for the confessions of women is equivalent to a church, oratory or semi-public oratory for the purposes of this law; 24 November, 1920.

(ii) "Adeat" is to be understood as including the case where a religious herself requests the confessor's attendance in a place lawfully assigned for the confessions of women; 28 December, 1927, ad II.

(iii) "A place lawfully assigned" is to be understood as including a place assigned "per modum actus" even though it is not so assigned habitually; it includes also a place assigned in accordance with the terms of canon 910, §1: "Feminarum confessiones extra sedem confcssionalcm ne audiantur, nisi ex causa infirmitatis aliave verae necessitatis et adhibitis cautelis quas Ordinarius loci opportunas indicaverit"; 12 February, 1935.

(iv) The reason for this meticulous definition of the "place" is that the clause defining the locality affects the validity of the absolution. This has always been held by canonists. It was asserted by the President of the *Code Commission* in a private reply, 16 January, 1921, mentioned by Bouscaren, *Digest,* I, p. 295; and it was re-asserted publicly by the *Code Commission,* 28 December, 1927, ad I.

Briefly, then, it is now quite certain that a priest with faculties from the local Ordinary for the confessions of women may validly absolve a sick nun in the infirmary even though she is not gravely ill.

H

§3. RESERVED CASES

205.—Juveniles and Censures

There is an opinion that girls as well as boys are liable to incur ecclesiastical censures only after the completion offourteen years of age, and consequently that a girl convert under that age need not be absolvedfrom censure. Can that opinion be safely followed, at least in the diocese of Liverpool, in view of a decision of the Holy Office of 3 June, 1908, *addressed to the then Bishop of Liverpool, which explicitly states that girl converts who have completed twelveyears must make the abjuration of heresy and be absolvedfrom censure ?*

The decision of the Holy Office, 3 June, 1908, answered *affirmative* to the following question: "Utrum puellae, quae maiores sint duodecim annorum, minores vero quatuordecim, haeresis abiurationem facere et absolutionem a censuris recipere debeant ? Regula enim Albitii *{Collectanea,* S.C.P.F. 1680) tantum de pueris loqui videtur 'Si debba esigere dai giovanni l'età di 14 anni la sola professione della fede cattolica'. Lex vero communis puellas maiores duodecim annorum censuris ligari affirmat."

(i) The question whether the age of 14 applies to girls as well as to boys, in this connection, has long been in dispute amongst canonists both before and after the Code. Probably the best and most exhaustive study of the subject is by Fr. Berutti, O.P., in *Jus Pontificium,* 1936, p. 26, who holds it to be certain, from canons 2230 and 88, §2, that girls can incur censures from the age of 12, and he quotes a dozen post-Code canonists of the same view including Maroto, Chelodi, Blat, Ojetti, Raus and Coronata.

On the other hand, with the care to be expected in so distinguished a writer, he quotes ten others who are equally certain of the opposite view that the age of 14 is the same for girls and boys, and these include Sole, Cappello, Cocchi, Michiels and Robert!; moreover, he cites a number who think that this more liberal view is probable: Gcnicot-Salsmans, Prümmer, Vcrmeersch-Creuscn, to which names may be added many others, e.g. Gougnard, *Collationes Theologicae,* fasc. ii, 1936, p. 140; Tummolo-Iorio, *Theol. Moralis,* II (1936), §582, q. 27 and §909 n. 1. Cf. also *Pontes,* n, 1073.

(ii) Tummolo-Iorio states: "Ad effectus legis poenalis feminae, quoad pubertatem acquiparantur, saltem probabiliter, maribus, ita ut pro utrisque attendenda sit aetas 14 ann. expletorum (canon 88, §2). Nec obstat resp. *particulare* S.Off., 3 Jun. 1908." He is one of the few authors who arc aware of the Liverpool rescript, which is not found or mentioned in any of the collections we have consulted. Its force is limited to the particular persons for whom it was given, according to canon 17, §3: "Data (interpretatio authentica) autem per modum sententiae iudicialis aut rescripti in re peculiari, vim legis non habet et ligat tantum personas atque afficit res pro quibus data est." In our view, accordingly, the terms of the rescript affect the diocese of Liverpool, but in other places the more liberal opinion may safely be followed.

206.—Re-incurred Censure

A censure reserved to the Ordinary but absolved under canon 2254, §1, *is re-incurred if the penitent fails to have recourse to the competent superior within a month. May this re-incurred censure also be absolved wider the same canon?*

We have not Found this precise situation discussed by the commentators, but the solution seems quite clear. It will be necessary, in the first place, for the second confessor, who is dealing with a case of non-compliance with the law, to decide whether, as a matter of fact, the censure has been again incurred. He will come to a decision exactly as he would in examining any other *delictum* to which is attached a censure *l.s.,* and he will make a special point of discovering whether the penitent knew that a censure was attached to culpable non-compliance with the law of recourse within a month.

If the decision is that the censure has been re-incurred, there is no reason against its absolution according to the procedure of canon 2254, §1, for the law contains no exception and *in poenis benignior est interpretatio facienda.* The penitent must again be warned that the censure will be re-incurred unless recourse to the competent superior is had within a month.

If, on the other hand, the decision is that the censure has not been re-incurred, there remains the obligation of recourse to the competent superior arising from the previous absolution; the time limit is "ad urgendam, non ad finiendam obligationem".1

207.—Doubtfully Reserved Censure

Does the rule of canon 2245, §4, *apply even to censures reserved "specialissimo modo" in the case where absolution has been obtained and, later, it is established that the censure was not doubtfully but certainly incurred1*

Canon 2245, §4: Censura latae sententiae non est reservata, nisi in lege vel praecepto id expresse dicatur; et in dubio sive iuris sive facti reservatio non urget.

In interpreting the latter part of this law the commentators, both before and after the Code, are agreed that, if absolution has been obtained *ad cautelam* in cases of doubt, the censure is not re-incurred when, later on, the doubt is removed. Cf. canons 19; 2219, §1; 2228; 2242, §1; 2246, §2; 2248, §3. "Nec retractatur absolutio si postea vel peccatum, vel censura, vel reservatio indubia apparuerint et manifesta. Ratio est, quia in casu iurisdictio suppletur a iure, uti probatur ex can. 209: in errore communi au in dubio positivo et probabili sive iuris sive facti, iurisdictioncm supplet Ecclesia pro foro tum externo, tum interno. Quia igitur Ecclesia supple, iurisdictioncm, perinde est ac quis ea praeditus sit."2

In other matters censures reserved *specialissimo modo* arc often distinguished from the rest, e.g. canon 2247, §5, with regard to absolving in ignorance. But no similar distinction exists in cases of censure doubtfully incurred, and the familiar rule must be held to apply: *ubi lex non distinguit,* etc.

1 Vcrmccrsch-Crcuscn, *Epitome,* 111, §454.
• Sole, *De Delictis,* § 176.

208—Censure and General Absolution

During an air raid a person is absolved by general absolution. In his repentance at that time was included a sin to which a censure reserved to the Ordinary is attached. When this sin is confessed orally what should the confessor do about the censure?

Assuming that the censure was incurred, the situation is that it was absolved *in periculo mortis.* From canon 2252 the obligation of recourse to the competent superior arises, in such cases, only when the censure is one which is reserved *ab homine,* or reserved *specialissimo modo* to the Holy See.

The fact that the absolution in this case was a general one does not modify the doctrine, but any doubt there may be is removed by the explicit statements in the formula of faculties issued to chaplains, 8 December, 1939, 14 b. It will be seen that the faculty to absolve from reserved censures in n. 13 of this document is extended to general absolutions, but everyone absolved in this manner must be instructed to mention the sins absolved by general absolution when next they go to confession: "Ne omittant vero poenitentes docere absolutionem ita receptam non esse profuturam, nisi rite dispositi fuerint, eisdemque obligationem manere integram confessionem suo tempore peragendi."

The duty, therefore, of the confessor who receives this confession is quite clear. No recourse to the Ordinary is required, but he must assure himself that the penitent is willing to comply with the requirements of the church—conveniently described as *iniunctis de iure iniungendis*—which will differ according to the case. The censure, for example, incurred from canon 2319, §1.3, through educating one's children as non-Catholics, requires for its absolution that the children shall henceforth be educated as Catholics. If the penitent seriously promises to do this, everything is in order; if he culpably refuses to do so, he is under the censure and must be refused absolution; and, indeed, if he was in this state of mind at the time when general absolution was received, it was wholly ineffective.

209.—Absolution of Censure "ab Homine"

From canon 2252, recourse to the appropriate superior is required, when the danger of death has passed. Why, then, is this not mentioned in the chaplains' faculties n.

Canon 2243, §2: Censura *ab homine* est reservata ei qui censuram tulit....

Canon 2252: Qui in periculo mortis constituti . . . receperunt absolutionem ab aliqua censura ab homine vel a censura specialissimo modo Sedi Apostolicac reservata, tenentur, postquam convaluerint, obligatione recurrendi, sub poena reincidentiac. . . .

S.C. Consist., 8 December, 1939, n. 13: (facultas) absolvendi ab omnibus casibus et censuris quomodocumque reservatis . . . cum onere tamen . . . sub poena reincidentiae recurrendi, si de censuris specialissimo modo Sedi Apostolicae reservatis, atque de illa, de qua in Decreto J. *Poenitentiariae* "Lex Sacri Caelibatus" dici 18 Aprilis 1936, agatur.

n. 14: Imminenti aut commisso proelio: (a) meminerint sacerdotes se, licet ad confessiones non adprobatos, facultate gaudere omnes milites . . .

absolvendi ... a quibusvis peccatis ct censuris, iniunctis de iure iniungendis.

Quoniam vero . . . ipsae civitates . . . aereis incursionibus expositae inveniuntur . . . liceat sacerdotibus eosdem (Christifidcles) a quibusvis peccatis et censuris reservatis et notoriis, etiam formula generali absolvere. ...

(i) The reason is, we think, that army chaplains have received faculties which arc even wider than those given by the common law in canon 2252. N. 14 is no more than a reminder, with liberal interpretations, of the powers all priests possess by the common law in canons 882, 892, §2 and 2252. The powers of n. 15, on the other hand, arc enjoyed only by those who have received them from the military authorities. When a chaplain, who possesses the faculty of n. 13, absolves in the circumstances of n. 14, his absolution from *ab bonifie* censures is wider than that given by a civilian priest who is relying on the common law alone; no recourse is necessary, since n. 13, a faculty restricted to army chaplains, makes no mention of this obligation, except for censures reserved *specialissimo modo* and one other. Cf. *Nouvelle Revue Théologique,* March 1940, p. 309.

(ii) It must be remembered, however, that all these faculties, whether in n. 13 or n. 14, are for the internal forum of the sacrament of Penance. Thus, a person absolved from a censure reserved *ab bomine,* by a priest enjoying the faculty of n. 15, is under no obligation of recourse in the sacramental forum. But in the external forum the superior's rights remain intact and can be enforced according to the terms of canon 2251, an important definition of the relations between the internal and external forum.

210.—Absolution from Heresy

A penitent incurs the censure of excommunication for heresy by an act which has all the qualities of a delictum, but is entirely occult. Is the abjuration prescribed by canon 2314, §2, *necessary before such a person can be absolved?*

Canon 2514, §2: Absolutio ab excommunicatione de qua in §1, in foro conscientiae impertienda, est speciali modo Sedi Apostolicae reservata. Si tamen delictum apostasiae, hacrcsis vel schismatis ad forum externum Ordinarii loci quovis modo deductum fuerit . . . praevia abiuratione iuridica peracta aliisque servatis de iure servandis, sua auctoritate ordinaria in foro exteriore absolvere potest; ita vero absolutus, potest deinde a peccato absolvi a quolibet confessario in foro conscientiae. Abiuratio vero habetur iuridicc peracta cum fit coram Ordinario loci vel eius delegato et saltem duobus testibus.

The process for the external forum, with which this canon is principally concerned, is followed whenever a convert is received into the Church. Accordingly Tit. iii, cap. iv of our *Ordo Administrandi* mentions the abjuration of heresy before two witnesses in n. 5; the priest who applies for the faculty is delegated by the Ordinary to absolve from the censure; and usually the rescript states that the convert may choose any confessor for sacramental absolution. Cf. Q. 20, which meets the objection that converts may often be excused from censure, and are therefore wrongly regarded as excommunicated.

The ordinary power of a bishop in absolving from the censure attached to heresy is wholly restricted to the external forum, as described above. Absolution in the internal forum is reserved *speciali modo* to the Holy Sec, and even those cases which arc not entirely occult are not excluded from this method of absolution, the rights of authority in the external forum being provided-far in canon 2251: "Si absolutio censurae detur in foro externo, utrumque forum afficit; si in interno, absolutus, remoto scandalo, potest uti talem se habere etiam in actibus fori externi; sed, nisi concessio absolutionis probetur aut saltem legitime praesumatur in foro externo, censura potest a Superioribus fori externi, quibus reus parere debet, urgeri, donec absolutio in eodem foro habita fuerit."

Cases which are entirely occult are clearly to be absolved in the internal forum by a confessor who has either obtained the necessary faculty or who is using the powers of canon 2254. In their quinquennial faculties Ordinaries are accustomed to obtain from the *Sacred Penitentiary* delegated jurisdiction over this reserved case, which they may sub-delegate to a confessor. An example of this induit may be seen in *Collationes Brngenses,* 1923, p. 161: "Absolvendi quoscumque poenitentes (exceptis haereticis haeresim inter fideles e proposito disseminantibus) a quibusvis censuris et poenis ecclesiasticis ob haereses tam nemine audiente vel advertente quam coram aliis externatas incursis; postquam tamen pocnitens magistros ex professo haercticalis doctrinae, si quos noverit, ac personas ecclesiasticas et religiosas, si quas hac in re complices habuerit, prout de iure denunciaverit; et quatenus ob justas causas huiusmodi denunciatio ante absolutionem peragi nequeat, facta ab eo seria promissione denunciationcm ipsam peragendi cum primum et quo meliori modo fieri poterit, et postquam in singulis casibus haereses coram absolvente secrete abjuraverit; iniuncto pro modo excessuum gravi poenitentia salutari cum frequentia sacramentorum, et obligatione se retractandi apud personas coram quibus haereses manifestavit, atque illata scandala reparandi."

Accordingly the abjuration of heresy, required in the nature of things before absolution, and expressly mentioned in the above faculty, is made secretly before the priest whenever the censure is absolved in the internal forum of Penance. No special formula is required. Gougnard, *Collationes Theologicae,* 1936, p. 99, suggests: "haereses quascunque ab Ecclesia damnatas ego pariter damno et rejicio".

211.—Canon 2350: Co-operation

Does the person who assists financially in this crime incur the censure? May it be absolved when a censured person would otherwise stiffer loss of reputation, for example, a patient lying in a hospital?

Canon 2209, §5: Non solum mandans qui est principalis delicti auctor, sed etiam qui ad delicti consummationem inducunt vel in hanc quoquo modo concurrunt, non minorem, ceteris paribus, imputabilitatem contrahunt, quam ipse delicti executor, si delictum sine eorum opera commissum non fuisset.

§4. Si vero eorum concursus facilius tantum reddidit delictum, quod etiam sine eorundem concursu commissum fuerit, minorem imputabilitatem sccumfert.

Canon 2231: Si plures ad delictum perpetrandum concurrerint, licet unus tantum in lege nominetur, ii quoque de quibus in canon 2209, §§ 1-3, tenentur, nisi lex aliud expresse caverit, eadem poena. . . .

Canon 2350, §1: Procurantes abortum, matre non excepta, incurrunt, effectu secuto, in excommunicationem latae sententiae Ordinario reservatam. . . .

The absolution of this censure differs in no way from others, and is subject to the procedure of canon 2254, if the appropriate conditions are verified.

It is incurred by those who procure the commission of the crime by the various ways indicated in canon 2209, of which §3 certainly covers the case of financial assistance, if it is established that the crime would not have been committed unless this financial assistance had been given. The censure is incurred by the person who furnished the money, provided the usual conditions for incurring any censure are present.

Quite often, however, a person already resolved upon this crime may be seeking financial assistance in order to commit the offence with greater security or secrecy, a situation covered by §4 of canon 2209. According to the wording, indeed, of canon 2350, compared with the terms of canon 2229, §2, diminished imputability does not necessarily excuse. But canon 2251 so clearly excludes the contingency of canon 2209, §4, that we think it must be held that the censure is not incurred. It is, at least, extremely doubtful, in which case the law on censures always favours the delinquent. Cf, Michiels, *De Delictis,* pp. 310, 324; Cappello, *De Censuris,* §27; Wernz-Vidal, *Ius Canonicum,* VII, §§116; 121, iv; 472.

212.—Cases Reserved to the Ordinary

What is the sense to be given io the words of canon 883, §2, "*etiam a casibus Ordinario loci reservatis*" ?

Canon 883 §2: Quoties vero navis in itinere consistat, possunt confessiones excipere tum fidelium qui quavis de causa ad navim accedant, tum eorum qui ipsis ad terram obiter appellantibus confiteri petant, cosque valide ac licite absolvere etiam a casibus Ordinario loci reservatis.

The obscurity arises because the words may be taken in two senses. They can mean the cases reserved *propter censuram* which the common law of the Code reserves to Ordinaries; or they can mean those cases, generally *propter peccatum,* which Ordinaries may reserve to their own tribunal, from canons 895 seq., in addition to those which arc already reserved to them by rhe common law.

The commentators do not usually discuss this point, and the two we have consulted do not agree. Fr. C. Berutti, O.P., writes in *Jus Pontificium,* 1954, p. 66: "Manifeste patet proinde quod agitur exclusive de casibus, quos ibidem Ordinarius loci sibi ipse reservaverit (ad normam can. 895 et seqq.): quorum sane notitiam, ut plurimum, habere nequeunt. Ceterum, si comprehenderentur etiam censurae quae iure communi Ordinario loci reservantur, explicari non posset, cur eadem facultas sacerdotibus navigantibus non tribuatur etiam in can. 885 §1. Itaque, a casibus iure communi reservatis, itemque a censuris ab homine inflictis, sacerdotes navigantes absolvere

nequeunt, nisi servatis praescriptis quae in iurc communi ad rem generaliter statuuntur."

Fr. Vermeersch, S.J., on the other hand, writing in *Periodica,* 1930, p. 119, holds that both classes of reservations are included in canon 883, §2: ". . . valide et licite absolvere possunt a casibus Ordinario loci reservatis: sive reservatio ista a iurc vel ab ipso Ordinario procedat. Haec est enim naturalis et consueta vis verborum 'a casibus Ordinario loci reservatis'."

In our view, the interpretation of Fr. Berutti is to be preferred, particularly as the document on which the law of this canon is based[1] reads "a casibus Ordinario loci*forte* reservatis", a phrase which has no exact meaning except for reservations which the Ordinary has himself added to those of the common law. The opinion of Fr. Vermeersch may, nevertheless, be followed as at least probable: it is a *dubium iuris* and jurisdiction is supplied from canon 209.

213.—Reservations in Internment Camps

Does thejurisdiction for confessions, conceded by the "Sacred Penitentiary", 22 February, 1941, *to ail priests in internment camps, include the power to absolve from cases reserved to the Ordinary ?*

(i) The question is an interesting one for those who are attracted rather than repelled by the complicated subject of reservations. It is our opinion that the jurisdiction enjoyed by priests in concentration camps is subject to all the limitations accompanying jurisdiction which is obtained in any other way by the common law: that is to say, they have *per se* no jurisdiction over the censures reserved in the Code to Ordinaries, and *afortiori* they have none over those reserved in the Code to the Holy See.

But, in addition to these reservations in the common law, local Ordinaries may themselves reserve cases to their own tribunal both *propter peccatum* (canon 893 scq.) and *propter censuram* (canon 2245, §4); there may also be cases reserved to the Ordinary by Provincial law in the district where the concentration camp is situated. It is our opinion that the camp confessors enjoy jurisdiction over all these cases.

(ii) Whether the above opinion is speculatively correct or not, it will be found in practice that the camp confessor enjoys the power of absolving validly in the internal forum of conscience practically any case which is brought to his tribunal. For the absolution of all censures *l.s.* he can use canon 2254, §1, and if recourse to the appropriate superior within a month is morally impossible, §3 of the same canon releases the penitent from this obligation. Similarly, for the absolution of reservations *propter peccatum,* canon 900, §2, declares that reservation ceases whenever the superior cannot be reached without grave inconvenience—which would be the case. If the confessor does not know which cases are withdrawn from his jurisdiction, and having no means of finding out absolves in ignorance, the absolution of a reservation *propter peccatum* is valid but indirect and the penitent is theoretically under the obligation of presenting it again, when the occasion offers, for direct absolution; in similar circumstances the confessor's absolution from reservations *propter censuram* is valid, except

[1] *S. Off.,* 15 December, 1906; *Fontes.* n. 1281.

for reservations *ab homine* and those reserved to the Holy Sec *specialissimo modo* (canon 2247, §3). Moreover, from canon 209 jurisdiction is supplied by the Church "in errore communi aut in dubio positivo et prohabih sive iuris sive facti".

(iii) In spite of these liberal provisions of our modern canon law, all designed to make it possible for penitents to be absolved without needless delay, certain extremely unusual cases might arise which are not covered by them, e.g. a penitent "notoriously" under a declaratory sentence of excommunication. An unprivileged confessor cannot validly absolve him except in danger of death (canon 882); very likely this danger could be reckoned present owing to air raids or other perils of modern warfare. If it is impossible, even with a most liberal interpretation, to discern any danger of death, the confessor can do nothing more than assist the penitent to make a perfect act of contrition, pending recourse to the appropriate supcrio'

214.—Reservation "Respectivo Ordinario"

What ground is there for the common interpretation which regards the suspension Is· °fI Wutm.' Dec. XA71Z, *as being reserved to the proper Ordinary of the delinquent? If this is correct, there appears to be no difference between this censure and a censure "ab homine".*

(i) This is certainly the accepted interpretation. The suspension itself has a long and varied history. In 1753 Bishop Petre and his coadjutor, Bishop Chailoner, adopted the suggestion of Benedict XIV12and prohibited the secular clergy from frequenting certain places of amusement under pain of suspension *ferendae sententiae.* In 1805 the VV.AA. of the four districts, after a long discussion during their meeting at St. Edmund's College, decided that the censure should be *latae sententiae,* but it was not reserved? The First Council of Westminster applied it to all clerics in sacred orders and added the reservation "cum reservatione respectivo Ordinario", which was repeated in the Fourth Council.34 In Guy's English translation the version for this reserving phrase is in one place "reserved to each one's Ordinary", in another place "with reservation to the respective Ordinaries".1 In Bishop Myers's valuable historical notes on the history of this suspension, the accepted interpretation of the nature of the reservation is recorded: "A new sanction was added to the existing suspension by reserving it to the Ordinary of the culprit."6

(ii) In the common law of the Code, canons 2245 and 2253 determine the classes of reservation amongst censures, and the superior who may absolve from them:

Canon 2245, §2: "Censura *ab homine* est reservata ei qui censuram inflixit aut sententiam tulit, eiusvc superiori competenti, vel successori aut

1 *Apostolicwn Ministerium,* § 18; *Fontes,* n. 425.
2 *Facultates et Observandae in Districta Londiniensi,* x8oj, Q. xiv.
1 Dec. XJ> n. 9.
4 *The Synods in English,* p. 150, n. 2; p. 176, n. 9.
• *The Clergy* 111, 1932, p. xox.

delegato; ex censuris *veto a inre* reservatis aliae sunt reservatae *Ordinario,* aliae *Apostolical Sedi."*

Canon 2253: "Extra mortis periculum possunt absolvere: . . . 2. A censura ab homine, ille cui censura reservata est ad normam can. 224$, §2; ipse autem potest absolutionem concedere etiamsi reus alio domicilium vel quasi-domicilium transtulerit; 3. A censura *a inre reservata,* ille qui censuram constituit vel cui reservata est, eorumque successores aut competentes superiores aut delegati. Quare a censura reservata *Episcopo vel Ordinario,* quilibet Ordinarius absolvere potest suos subditos, loci vero Ordinarius etiam peregrinos. . . ."

Hence the common law does not recognize a class of censure *a inre reservata Ordinario "proprio",* such as the suspension we arc discussing would be, if the accepted interpretation is followed.

(iii) One solution of the difficulty might be that we have here an altogether special kind of reserved censure, unknown to the common law and operative only in England. The *Consistorial Congregation,* 2 August, 1918, determined that the decrees of the Westminster Councils are, after the promulgation of Code, still operative in the new Provinces "salvis tamen novi codicis praescriptionibus si et in quantum legibus et decretis dictorum Conciliorum derogaverint". In a private reply of the same Congregation it is explicitly asserted that a priest of any English Province who breaks the law of *1 Westm.,* Dec. XXIV, is still subject to the penalty: "poenae suspensionis ipso facto incurrendae, hactenus ubique in Anglia vigenti, cum reservatione respectivo Ordinario".1

(iv) But it may be doubted whether this is the correct solution and whether it is necessary to see in this reservation, cither before or after the new arrangement of the Provinces, anything peculiar to England. For the ,jhrase used is "respectivo Ordinario", not "proprio Ordinario". The latter is certain and unambiguous and is used in other decrees of the Westminster Councils. "Respectivo Ordinario" is certainly patient of the meaning attributed to it by Fr. Guy in one place, namely "to each one's Ordinary". But it is also patient of the meaning "to the Ordinary whom it may concern", and may be understood in the sense that it is meant to include the competent religious superior, in the case of religious who come under the censure, for it was not apparently until the First Westminster Council that religious in sacred orders came within the law. "Ordinarius", as wc learn from canon 198, has a wider meaning than "Ordinarius loci". If we adopt this interpretation the theatre suspension will then be in line with the common law regarding reservations. What the Fathers of the Council intended could be discovered, perhaps, from the minutes of the Council, if they still exist. But we arc entitled to interpret the law from its text. In our opinion, there is a grave doubt whether the suspension is reserved to one's own Ordinary, and our conclusion must be that not only the proper Ordinary of the delinquent, but any Ordinary in whose territory the delinquent happens to be, as a *peregrinus,* can validly and lawfully absolve from this censure.

› *?t< citrgy Rtvitw,* Ill, 1952, p. 224.

§4. CONFESSOR'S OBLIGATIONS

215.—Passio Domini, etc.

A priest has adopted the following practice, justifying it by arguments as to the importance of the prayer and the value of bringing it home to tbe penitent: after tbe formula of absolution be recites aloud tbe prayer "Passio Domini, etc.", in an English translation. To the objection that the sacrament may not be administered in English, be replies that this prayer is not essential io the absolution and that, therefore, he may say it even in the vernacular. Can his practice befollowed?

Canon 885 : Etsi preces, ab Ecclesia formulae absolutionis adiunctae, ad ipsam absolutionem obtinendam, non sint necessariae, nihilominus, nisi justa de causa, ne omittantur.

Rituale Romanum, Tit. iii., cap. ii, n. 4: Justa de causa omitti potest *Misereatur,* etc., et satis est dicere: *Dominus noster Jesus Christus,* etc., ut supra usque ad illud: *Passio Domini nostri,* etc.

Ordo Administrandi, Tit. iii, cap. iii, n. 4: In confessionibus frequentioribus et brevioribus omitti potest *Misereatur,* etc., et satis erit dicere. . . . (The rest is the same as the *Roman Ritual (Joe. cif.').* Our *Ordo Administrandi,* in the previous words, repeats the reading of the *Roman Ritual* before 1925.)

Cone. Trid., Scss. XIV, cap. 5 : . . . *Ego te absolvo,* etc., quibus quidem de Ecclesiae sanctae more preces quaedam laudabiliter adjunguntur, ad ipsius tamen formae essentiam nequaquam spectant, neque ad ipsius sacramenti administrationem sunt necessariae.

(i) Any necessity, such as a large concourse of penitents, justifies the omission of the prayers before and after *Dominus noster Jesus Christus,* etc. If they are omitted without a corresponding necessity, the writers for the most part say that there is no sin, not even venial sin. This is the doctrine of St. Alphonsus quoting De Lugo and a number of contemporaries,1* and it is based on the words of the Council of Trent "laudabiliter adiunguntur". The opposite view of Chretien, "leve peccatum est",- and of a few others, is not, in our opinion, correct.

(ii) If it is no sin to omit these words, and yet praiseworthy not to omit them, the conclusion must be that their recitation is recommended as a counsel, not as a precept. It is an act of charity, at least, to recite them. St. Thomas teaches that the formula has a special efficacy in elevating the acts of the penitent to the status of sacramental satisfaction,3 which would be a serious reason for not omitting them. But there are difficulties in accepting this view,4 since the words refer to future acts of the penitent, whereas the sacramental satisfaction or penance refers to past sins just remitted. Nevertheless, it can readily be admitted that the words, coming as they do within a formula for administering the sacraments, have an efficacy superior to that of a purely private prayer. They arc said in the name of the Church and can rightly be described as constituting a sacramental. It is praiseworthy,

1 *TbeoK Moratis,* VI, §450, ad 5.
1 *De Poenitentia,* §70.
• *Ouodl.,* 1П, art. 28; *Parma,* IX, p. J05.
4 Cf. Cappello, *De Poenitentia,* §80; Gougnard, *De Poenitentia,* p. 88.

because an act of charity, not to deprive the penitent of the effect of this formula.

fiii) The position of the priest referred to in the above question is evidently that of a confessor who wishes *ex caritate* to assist the penitent. As we view the matter, the question is really whether the same effect, whatever it may be, is caused by reciting the formula in the vernacular. The question is not of vast importance, and it is open to anyone to form his own view from the above *data.* Our own view is that it should be recited in Latin. This is based on the assumption that the formula is a sacramental, and canon 1148 requires the rite of a sacramental to be accurately observed. It is, in fact, the common teaching that the effect of a sacramental is not caused unless the rite, as determined by the liturgical books, is properly observed. Our conclusion, therefore, is that it may be omitted without any sin; but that it should be said in Latin, if the penitent is to profit by the full spiritual effect the Church intends. We also think it is an excellent suggestion to recite the *formula* in English as well, as an additional benefit to the penitent *ex caritate.*

No writers, so far as we can discover, deal with the question raised. If it were ever submitted to the *Congregation of Rates,* we would anticipate the same reply as that given to the query whether the apparently useless word "deinde" might be omitted: "nihil esse innovandum".

216.—Absolution Form for Children

Is it lawful, when hearing the confessions of children who have not reached the age of puberty, to omit the words of the form containing absolution from censures? To shorten the form would be convenient occasionally when a large number of children have to be heard in one session.

From canon 2230 compared with canon 88, §2, children not of the age of puberty are excused from incurring censures/./., and the words of the form "ab omni vinculo excommunicationis suspensionis et interdicti" are apparently, in their case, useless. There exists no express law that the whole form must nevertheless be said for ritual or ceremonial reasons. Therefore one may omit absolution from censure following the teaching of certain writers, e.g. Cappello, *De Poenitentia,* §80, and Gougnard, *De Poenitentia,* p. 91. None, so far as we can discover, describes how the form should then read, but we are of the opinion, on the principle of canon 885, that the absolution form must be retained exactly as given in the rituals, and that the only words which may be omitted arc the seven words quoted above.

The common practice of confessors, however, is never to omit anything in the sentence "Dominus noster . . . Spiritus Sancti", except "suspensionis" when the penitent is not a cleric. Without questioning the right of confessors to avail themselves of the opinion given above, our own preference is for the unabbreviated form. The words are not utterly senseless, for children may incur censures *ferendae censure* in theory, and, moreover, the phrase "in quantum possum et tu indiges" saves the judgement from being meaningless. As is well known, the words *Misereatur,* etc., and *Passio Domini,* etc., may be omitted for appropriate reasons; if, in addition, the phrase *Dominus noster,* etc., is also reduced, it would mean dismissing peni-

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217.—General Absolution

Is a general absolution valid if given by a priest in the presbytery to all the Catholics

(i) A general absolution to be valid must conform to the requirements of this sacrament *inre divino,* which arc all contained within the teaching of the Church in the Council of Trent, Scss. XIV, can. 9, that priestly absolution is a judicial act. The essentials of this act, as well as the conditions for the valid reception of any sacrament, are certainly observed when a general absolution is given to a regiment or to a church full of people: *(a)* the penitents have the requisite intention and manifest it externally by reciting the act of contrition; (Z>) the judicial sentence is pronounced by the priest in the words of absolution, after reminding the people, as ordered by the Holy See,1 that the absolution is of no avail unless they are rightly disposed, and that an integral confession of their sins must be made on a future occasion; (r) the recipients arc present at this judgement.

(ii) In the circumstances of the above question, the faithful could be previously instructed to form an intention and make an act of contrition immediately the sirens sound. At the same moment the priest could pronounce the words of absolution, having previously instructed the people on the conditions attached to its reception, thus securing some degree of simultaneity between the matter and form of the sacrament.

If, in addition, it could be said that the recipients are, in some probable sense of the word, present at the priestly absolution, it would follow that the act is probably valid and therefore permissible at least conditionally. It is under this aspect of the matter that many disputed questions have been, and still are, discussed: absolution by letter is invalid; by telephone extremely doubtful; pronounced over one who has precipitately left the confessional, it will depend on the distance. Whether examined on theological principles or subjected to a tiresome casuistical method, a correct solution of all these questions turns on establishing the presence or absence of the penitent at the moment of absolution.

If it were merely a matter of ecclesiastical law, as in the absolution of censures and other penalties, the judgement could validly be given in a variety of ways: by letter, messenger, telephone, telegraph or wireless. Nor is there anything in the nature of a judicial sentence which necessarily requires the presence of the penitent at the moment of absolution. This is required in the sacramental absolution of sin because, from the teaching of the Church, Christ has willed that the judgement shall be given in words and words alone: "Docet . . . sacramenti poenitentiae formam, in qua praecipue ipsius vis sita est, in illis ministri verbis positam esse: *Ego te absolvo,* etc." "Forma huius sacramenti sunt verba absolutionis."2

This verbal form, in which the penitent is mentioned by the personal pronoun, necessarily implies that he is present when it is uttered, and the theologians, therefore, restrict their discussions to determining the outside limit of distance within which "presence" is verified. They write,

l S.C. Consist., 8 December, 1959. 5. *Poenit.,* 25 March, 1944.

1 Trent and Florence: Denz. 896, 699; Cf. also the judgement of Clement VLll on absolution by letter: Denz. 1088.

indeed, of "moral" presence, but we agree with Chrétien,[1] that "physical" presence would better express their meaning; a person would be morally present in his deputy or proxy, which is clearly insufficient. It may be held with St. Alphonsus, that penitents are present if they can be seen by the priest,[2] but it accords better with the vocal form if we require the voice of the priest to be heard. Thus a well-established probabilist like Noldin advises that, in giving general absolution to an army, the men should be divided and absolved in separate groups if some are too far distant to hear the priest's voice.[3]

We cannot find any writer who expressly deals with the above question, and we arc not aware of any arguments proving that these scattered penitents may be considered present. It could be maintained, we suppose, that they are present as a body of parishioners. But in country districts the parishioners might be spread over a vast territory, and if these can be absolved, why not the whole diocese or the whole nation? Since we can find nothing to justify the view that penitents in these circumstances may validly be absolved, nor even a probability in its favour, it is our opinion that absolution may not lawfully be given even conditionally. Cf. writers *De Poenitentia:* de modo proferendi absolutionem, e.g. Cappello, II, §92; Marc-Gcstermann, II, §1665.

218.—Confessional Seal

***An** Anglican clergyman, who has not Sacred Orders, hears the confessions of his people regularly. They think, as they are taught to think, that their confessions and the absolutions which they receive are valid. Is the said clergyman bound by the sacramental seal?*

Canon 889, §1: Sacramentale sigillum inviolabile est; quare caveat diligenter confessarius ne verbo aut signo aut alio quovis modo et quavis de causa prodat aliquatenus peccatorem.

§2. Obligatione servandi sacramcntalc sigillum tenentur quoque interpres aliique omnes ad quos notitia confessionis quoquo modo pervenerit.

Canon 2569, §1: Confcssarium qui sigillum sacramentale directe violare praesumpserit, manet excommunicatio specialissimo modo Sedi Apostolicae reservata . . .

§2. Quicunque praescriptum can. 889, §2, temere violaverit, pro reatus gravitate plectatur salutari poena, quae potest esse etiam excommunicatio.

It is not in dispute that he is under the grave obligation of preserving a natural, professional or committed secret. In addition, it seems to us, the secret in this case is the confessional secret in the strict sense of the term, and comes within the law of canon 889, a conclusion which is readily perceived when we remember that the seal exists even in cases when absolution is not given. For the confession of the penitent is a sacramental one, namely made with a view to getting absolution, even though absolution is not received owing to the defect of orders or jurisdiction in the minister. "Confessio est sacramentalis, licet poenitens recedat sine absolutione quia

1 *Ds Potnitmtia,* p. 116, n. >7.
1 *Ibtol. Moralis* VI, §429.
3 *TbcoL· Moralis,* III, §258, c.

indispositus; sufficit ut ipse se accusaverit in ordine ad absolutionem. Proinde confessio non est sacramentalis si fiat *scienter* laico vel sacerdoti iurisdictione carenti."[1] Therefore the case is included under canon 889, §2, with the appropriate sanction of canon 2369, §2.

But it does not come within §1 of the canon, nor consequently does the graver sanction of canon 2369, §1, apply to the clergyman who directly violates the seal. For the word "confcssarius", particularly when there is question of a sanction, must be taken in the strict sense, and only a priest validly ordained can be such. Thus, in explaining the censure of canon 2322, §1, incurred by one not in priestly orders presuming to hear confessions, Gougnard notes in *De Poenitentia,* p. 358, that a direct violation of the seal in this instance is not liable to the penalty of canon 2369, §1, though gravely sinful and punishable under canon 2369, §2.

219.—Vesture in the Confessional

One frequently sees a priest in the confessional wearing a violet stole without a surplice', frequently also one sees a surplice being worn as well as the stole. Is it a breach of law not to wear a surplice ?

PJtuale P^omanum, Tit. i, n. 7, and Tit. iii, cap. i, n. 10: In omni Sacramentorum administratione superpelliceo sit indutus, et desuper stola eius coloris, quem Sacramenti ritus exposcit; nisi in Sacramento Poenitentiae administrando occasio, vel consuetudo, vel locus interdum aliter suadeat.... Superpelliceo et stola violacei coloris utatur, prout tempus, vel locorum fieret consuetudo.

It can readily be admitted that, in cases of necessity, not merely the surplice but the stole may be dispensed with; also that regulars vested in the habit of their Order need wear only a stole.

But, outside of these cases, the principle certainly is that a surplice should be worn. Decrees of the *Congregation of Kites,* n. 3426.4, and 5 542.3, merely refer the questioner to the Ritual which, as is evident, directs the use of a stole in principle and, as it were, tolerates its absence only if there is a contrary" custom.

In many places local law settles the point by expressly requiring the use of a surplice, e.g. : *I. \Cestm.,* Dec. XIX, n. 2 : "In confessionali sedeat sacerdos, superpelliceo et stola violacea indutus." *Liverpool Synod,* 1934, η. 155: "Saltem in sede confessionali sacerdotes confessiones audiant non tantum stola sed etiam superpelliceo induti." If no such law exists, we are of the opinion that the principle should be maintained of wearing a surplice. At any rate, the *onus* of proving that there is a contrary local custom rests upon those who wish to dispense with the surplice.

§5. DISPOSITIONS OF THE PENITENT

220.—Purpose of Amendment

Titius has sinned gravely and habitually with Sempronia, who is now dead. Though resolving not to sin for the future with other persons, and realising the

1 Cappello, *De Centurie,* §190.

impossibility ofever sinning again with Sempronia, be says that be would continue bis manner nflife with ber ifsbe were still alive. Is be disposedfor absolution ?

Cone. Trid., Denz. 897: Contritio . . . animi dolor ac detestatio est de peccato commisso, cum proposito non peccandi de cetero.

Summa Tbeol., III, 84, 10, ad 4: . . . ille enim est irrisor, et non pocnitens, qui simul dum poenitet, agit quod poenitet, vel proponit iterum se facturum, quod gessit.

(i) The phrase "he would continue his manner of life with her" could be held to mean that Titius foresaw, notwithstanding his repentance, that he would commit the same sin again. It would be an act of the *intellect* based on past experience of repeated falls. Thus Prümmer, *Tbeol. Moralis,* 111, §356: "Recte plures auctores animadvertunt, solum propositum firmum non peccandi de cetero requiri, non autem necessario *persuasionem* poenitentis se non amplius esse peccaturum, aut hoc vel illud peccatum non amplius patraturum. Potest enim quis vere dolerc et detestari peccatum, ac vere et absolute proponere se de cetero non esse peccaturum, tametsi valde timet, immo certo credit, se ob expertam voluntatis inconstantiam suam denuo relapsurum esse." If this is the penitent's state of mind, the confessor's duty is to persuade the penitent to trust in God's grace rather than in his own feeble powers; having removed what may be, perhaps, the beginnings of despair, the confessor may regard the penitent as sufficiently disposed for absolution.

(ii) On the other hand, the above phrase may mean that rhe penitent has not detested the past sin, because, supposing that his partner were alive again, he is resolved to continue his sinful manner of life. It would be an act of the *will* revealing quite clearly an affection for the sinful act which is quite inconsistent with the detestation required for true repentance. "Firmum oportet esse propositum saltem quoad praesentem affectum voluntatis, licet forte sit infirmum quoad futurum eventum."[1] In this state of mind, with the will inclined still towards the sinful act, the penitent is not disposed for absolution.

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221.—Contrition During Absolution

Is it necessary for tbe penitent to make an act of contrition whilst absolution is being pronounced? If not necessary, is it important?

Rituale Romanum, Tit. iii, cap. i, n. 1: . . . illius quidem remota materia sunt peccata, proxima vero sunt actus poenitentis, nempe contritio, confessio et satisfactio.

»»‹ ›(‹·”. hl··*'

N. 18: Demum, audita confessione . . . ad dolorem ct contritionem efficacibus verbis adducere conabitur . . .

(i) By "necessary" in the above question wc understand "essential for the validity of absolution". The act of contrition must necessarily precede absolution and be related to it at least virtually and implicitly; it is on this assumption that an unconscious person may be absolved. But it is taught by all that it is not necessary for the validity of the sacrament that the

1 Prümmer. *loc. at.*

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penitent should verbally or mentally make an act of contrition in the confessional, either immediately after the confession of sin and before absolution, or whilst absolution is being pronounced. The kind of simultaneity between the matter and form, required for the unity of the sacramental sign in other sacraments, is not necessary in the sacrament of Penance which has been instituted in the form of a judgement; there is nothing in the form of a judgement which requires the admission of guilt to accompany the sentence, or even to be made in the place where judgement is given. It suffices if it precedes the judgement and is related to it. Thus a person making an act of contrition over-night and determining to go to confession the next morning is validly absolved without an actual renewal of sorrow at the time; it is present virtually in the act of seeking or accepting absolution.[1]

Normally, whenever a person thinks of his sins and resolves to confess them he also makes an act of contrition, but it is strongly recommended that all penitents should explicitly make this act before entering the confessional; otherwise, owing to mental wandering or distraction, it may be omitted, perhaps, at the moment of absolution or immediately preceding it, and a necessary part of the matter of the sacrament may be lacking.

(ii) The Ritual directs the confessor, after hearing a confession, to stir up sorrow in the penitent, and confessors usually observe this rubric by at least saying: "Make a good act of contrition and I will give you absolution." Accordingly the practice of explicitly renewing one's sorrow at this time is rightly insisted upon, and children are always taught to do so when being prepared for their first confession, even though it is not necessary for the validity of the absolution if it has been done before entering the confessional. The practice should certainly continue because the rubric requires it, the penitent is thereby better disposed for receiving sacramental grace, and certainty is obtained that this necessary act of the penitent has preceded absolution.

222.—Generic Confession of Past Sins

*Devout people who confess regularly often have no sins to mention. May they be permitted, after confessing merely imperfections, to add: "**I** confess again all the sins of my past life," or must they specify what these past sins are, e.g. "all the sins of anger in my past life"?*

It is a question of what the writers call "free" matter, by which is meant venial sins not directly remitted, and all sins, mortal or venial, committed in one's past life and already remitted by absolution. Obviously without matter of some kind the absolution is of no avail.

(i) For the *validity* of absolution there is practical unanimity amongst all the modern writers in teaching that the confession of past sins, whether mortal or venial, as "free" matter, suffices even when the accusation is generic, e.g. "I am sorry for all the sins of my past life." The proof of this is that since generic confession suffices, for grave reasons, even when the matter is "necessary", e.g. at a general absolution of troops or when a

[1] Cf. Gougnard, *De Poenitentia,* p. 102; Prümmer, *Theol. Moralis,* III, §550.

dying person can do no more, it must be held to suffice *a fortiori* when the matter is "free".

(ii) But the writers are not agreed whether it is *lawful* to confess "free" matter generically unless there is some excusing cause. For the most part they consider the practice to be wrong, because there is some danger that the penitent will not have contrition for sins mentioned generically, and because the confessor cannot rightly form a judgement therefrom; moreover, it is not the common practice of the faithful to confess past sins in this way. Thus Prümmer, *Theol. Moralis,* III, §325.

The opposite view is, nevertheless, taught by writers of repute, e.g. Gcnicot, *Theol. Moralis,* II, §262, and it may be accepted as probable, the reason being that the Tridentinc law of specific confession refers only to mortal sins not yet directly remitted.

(iii) Our own view is that, in publicly instructing the faithful, this probable opinion should not be taught: they should follow the common practice and from motives of humility, when having nothing except "free" matter to present, should confess more specifically some past sins for which they are really sorry.

But, since the tribunal of Penance is one of mercy and peace, it is unwise to disturb the minds of penitents by refusing to accept a generic accusation of past "free" matter. The obligation of being more precise, if any, is admittedly not a grave one, and it is admittedly not binding if there is some excusing cause: a sufficient cause exists, we think, in the desire not to question a penitent unduly and thereby, perhaps, discourage the habit of frequent confession. Moreover, it cannot too easily be supposed that what are commonly called "imperfections" contain no trace of venial sin: there is usually some sloth or vanity attached to them which may be regarded as sufficient matter for sacramental absolution.

A scrupulous confessor could, in practice, evade the whole difficulty by saying before absolution: "Renew your sorrow for these things and for the sins against charity in your past life."

223.—Non-Catholic's Absolution

A priest bearing confessions gave absolution to all the penitents who had confessed. Afterwards one of thetn saw him and told him that she was an Anglican, and thought that she could always confess to him. Was the absolution which the priest bad given to her valid?

Canon 731, §2: Vetitum est Sacramenta Ecclesiae ministrare haereticis aut schismaticis, etiam bona fide errantibus caquc petentibus, nisi prius, erroribus reiectis, Ecclesiae reconciliati fuerint.

Canon 2202, §1 : Violatio legis ignoratae nullatenus imputatur, si ignorantia fuit inculpabilis; secus imputabilitas minuitur plus minusve pro ignorantiae ipsius culpabilitatc.

(i) Even though it may be held, for the internal forum of conscience, that a baptized non-Catholic has not incurred the censure of canon 2314, it is nevertheless forbidden to administer the sacraments to him from canon 73b §

The ecclesiastical law forbids it, but it cannot make the unlawful admin-

istration of a sacrament invalid; if the conditions *fare divino* for a sacrament arc verified, it is validly administered, even when the recipient is under a censure which deprives him of the rights enjoyed by the rest of the faithful, or should be denied the sacraments under the rule of canon 731, §2.

(ii) The chief condition for the valid reception of sacramental absolution is, in addition to Baptism and the requisite intention, that the penitent be rightly disposed, and it is precisely the lack of the necessary dispositions which will render the sacramental absolution invalid in the case of a penitent who is conscious of having incurred a censure, or who is conscious of the law of canon 731, §2. But, owing to inculpable ignorance, it is quite possible for a penitent to be unconscious of these laws, in which case the absolution is valid though gravely unlawful, except in danger of death, when it may also be lawful according to the opinion of many theologians.

224.—Deaf-Mutes and Confession

Is a deaf-mute strictly bound to confess bis sins by signs or writing in order to secure the material integrity of his confession ?

The position of deaf-mutes as discussed by the older authors[1] needs some modification in these days, when enormous progress has been made in teaching even deaf-mutes from birth to communicate their thoughts.

(i) One may say, firstly, that an integral confession, by writing or by other means, is usually to be urged for the advantage of the penitents themselves. That is to say, the law requiring integrity of a confession always binds in the sense that the confession must be made at some future time, when the reasons excusing one at the moment no longer hold: in making a confession by means of writing or signs, all anxiety about future obligations is removed, and the penitent is enabled to receive the sacrament more fruitfully.

(ii) Secondly, it is not established with certainty that there is an obligation to confess by writing, if an integral confession cannot otherwise be secured. Numbers of authors, ancient and modern, hold the view that the penitent is bound to write down his sins, provided the danger of breaking the seal is removed, and various methods arc suggested for removing it. St. Alphonsus says that this view is "probabilior et communior". But the milder view is also defended by many others, and it is, at least, solidly probable. The reason is put by Gcnicot as follows: ". . . scripturam ad confitendum esse medium extraordinarium et quod minus cohaereat cum iurc penitentis ad secretam confessionem. Nam scriptura est de se perpetua, ideoque ob casum quemdam, puta morbum confessarii, in cuiuslibet manus venire potest. Neque apparet cur ad scribendum adigatur mutus dum omnes ab hoc medio adhibendo excusant eum qui, ob labilem memoriam, peccata aliter recordari non possit".[2] The stress should be placed not on the act of writing, which, after all, is not so extraordinary a way of conveying our thoughts to others, but on the danger of public revelation of the sins enumerated, however remote this danger may be.

The view that such persons arc expected to write their confession is

[1] E.g. St. Alphonsus, *Tbeol. Moralis,* VI, §479.
[2] *TbtoL Moralis,* Π, §292.

defended by Fr. S. Klopfer, whose opinion is worthy of the highest consideration, since he has been many years a chaplain at a large institution for deaf-mutes in America.[1] This was also the view of Er. Charles Jones, a deaf priest who was for many years in charge of the deaf and dumb in London, and earned the admiration of all by his self-sacrificing life. "The deaf and dumb are accustomed to write their confessions, and give them to the priest, who asks by writing what is necessary, or points to the necessary questions in some of the forms of examination of conscience; then gives them to read some short *ferverino* to excite sorrow, with the Act of Contrition to recite before absolution. This little extra care will not be time wasted; it will ensure a more fruitful reception of the sacrament of Penance on the part of the deaf and dumb penitent who really needs this extra care."[2]

In giving a probable solution to a question which is in dispute, it is always preferable to rely on the opinion of persons skilled and experienced in the matter under discussion, rather than upon the speculative opinions of authors. It is the Aristotclian-Thomistic notion of "probable" which has gone rather out of favour in these days.

Nevertheless, whilst insisting on the advisability and usefulness of writing, in the case of deaf-mutes, and whilst urging the practice as strongly as possible, it cannot be said to be a certain obligation.

(iii) Lastly, if the deaf-mute is trained to communicate his thoughts by signs which the confessor can understand, he is bound to confess his sins in this manner. "Inactu sacramenti," writes St. Thomas,[3] "ad manifestationem ordinarie assumitur ille actus quo maxime consuevimus manifestare scilicet, proprium verbum; alii enim modi sunt inducti in supplementum ipsius ... et ideo quando non possumus uno modo, debemus secundum quod possumus, confiteri." St. Thomas's argument supports the view that the penitent is bound to confess by writing. We have seen that, in the opinion of a number of theologians, writing cannot be insisted upon because of the possible danger of public revelation of sin. But the text is quoted here because of the phrase "ordinarie assumitur ille actus, quo maxime consuevimus manifestare". To the uninitiated it is baffling to witness the ease with which trained deaf-mutes can communicate with others by lip-reading, as well as by the old manual alphabet. The point is that, for such people, this method of communication is that which they normally and ordinarily employ in everyday use. The teaching of the authors who excuse deaf-mutes from the obligation of writing a confession is always given on the assumption that they cannot explain themselves by signs, either because they are unskilled or because the confessor does not understand the system.

225.—Annual Confession

A person who is not conscious of mortal sin makes his Easter Communion at the beginning of the paschal season. Is he bound to go to confession during this season if after making bis Easter Communion, he is guilty of grave sin ?

The law of annual confession is contained in canon 906, the law of

[1] *Ecclesiastical Review,* LVII, 1917, p. 79.
[2] A Circular recommended by His Eminence Cardinal Bourne, 7 December, 1919.
[3] *Supplementum,* 9, 3.

paschal Communion in canon 859. Both laws have their origin in the decree of the IVth Latcran Council, which unites both obligations in one text: "Omnis utriusque sexus fidelis, postquam ad annos discretionis pervenerit, omnia sua solus peccata saltem semel in anno fideliter confiteatur proprio sacerdoti, et iniunctam sibi poenitentiam pro viribus studeat adimplere, suscipiens reverenter ad minus in Pascha Eucharistiae sacramentum—nisi forte de consilio proprii sacerdotis ob aliquam rationabilem causam ad tempus ab eius prcccptionc duxerit abstinendum. . . ."

The faithful who are content to obey the law by communicating annually go to confession at the same time as a matter of course, and the erroneous notion is fairly common that there is a law which requires both confession and Communion during the paschal period. There is no point whatever in going out of one's way to upset this conviction, since confession is quite likely to be of obligation from the law of canon 856.

However, from a purely technical point of view, the law of annual confession may be considered as a positive precept of the Church quite distinct from that of Communion at Easter; quite distinct, also, from the law of canon 856, which requires a person who is conscious of mortal sin to confess before communicating; and obviously quite distinct from obligations in conscience which might arise on various other headings. We must prescind from all these considerations and examine the law of annual confession *ratione sid,* which entails determining, firstly, who are bound by the law, and, secondly, the reckoning of what is meant by "yearly" in this context.

(i) It binds those who, after reaching the age of discretion, arc conscious of mortal sin not directly remitted in the sacrament of Penance. It is certain that a person who has committed only venial sins is not bound by this law. For the positive ecclesiastical law determines more precisely what is already *iure divino,* as the Council of Trent noted: "Neque enim per Lateranense concilium Ecclesia statuit, ut Christi fideles confiterentur, quod iure divino necessarium et institutum esse intellexerat, sed ut praeceptum confessionis saltem semel in anno impleretur . . ,"1 It is this divine law to which canon 901 refers, whereas the positive law determining it is in canon 906. The latter is to be interpreted according to the terms of the former, namely "peccata" in canon 906 means "mortalia" as in canon 901. Moreover, the Council of Trent in the same context declares that one is not bound to confess venial sins.2 There is now complete unanimity that the law of annual confession refers only to persons who have committed mortal sin, but it by no means follows that this is one of the truths to be proclaimed to the faithful in season and out of season.

(ii) There is not the same agreement in determining the meaning of "annual". Some reckon the time from the first lapse into mortal sin committed since the last confession. Others think it should be reckoned by whatever style is current in deciding the first day of the year, which has been at various times 25 March, 25 December and Holy Saturday; on this view, with our present style of reckoning, the law of annual confession begins on i January and recurs on the following 1 January. Either of these opmions may be followed.

Personally we prefer a third view, which reckons the beginning of the

1 Dcnz. 901.
3 *Ibid.,* 899.

year for the observance of this law to be that day on which the obligation of Easter Communion begins, whatever may be the local usage. Thus, if Ash Wednesday is this day, the time for fulfilling the precept of annual confession is between Ash Wednesday and the Shrove Tuesday of the following year. This reckoning has the advantage of associating both precepts with the Easter period, and is so interpreted by Eugenius IV: "terminum statuisse a Pascha ad Pascham; cum dicit (canon) semel in anno".[1]

226.—"Quamprimum" in Canon 807

Is there any agreed period of time witbin which a priest is bound to go to confession in the circumstances of canon 807 ?

Canon 807: Sacerdos sibi conscius peccati mortalis, quantumvis sc contritum existimet, sine praemissa sacramentali confessione Missam celebrare nc audeat; quod si, deficiente copia confessarii et urgente necessitate, elicito tamen perfectae contritionis actu, celebraverit, quamprimum confiteatur.

The canon restates the law of the Council of Trent.[2] The equivalent law affecting all who wish to communicate is in canon 856, but it should be noted that the "quamprimum" clause applies only to a priest celebrant.

If the priest, in such a case, has to celebrate again—let us suppose, on the same day—he is bound to go to confession immediately before the second Mass, unless excused by the same circumstances "deficiente copia confessarii et urgente necessitate". He is bound by the law of the first part of canon 807. He is also bound to confess at once, if he is about to administer the sacraments and is unable to make an act of perfect contrition.

The force of "quamprimum", therefore, can only be rightly perceived by supposing that he is not going to celebrate again for some days, and that he is not being called upon to administer the sacraments. Two condemned propositions eliminate erroneous interpretations of the phrase: "Mandatum Tridentini factum sacerdoti sacrificanti ex necessitate cum peccato mortali, confitendi quamprimum, est consilium, non praeceptum."[3][4] "Illa particula 'quamprimum' intelligitur, cum sacerdos suo tempore confitebitur."[1] There is agreement amongst the authors in holding that this clause of the law is obeyed if the priest goes to confession within three days.[5]* This estimate of the meaning of the clause is arrived at chiefly from the authority of St. Alphonsus,® but there is also an intrinsic reason to be seen in the canonical interpretation of "quamprimum" in other texts of law.[7]

If the priest has communicated *more laicorum* he is not bound by this clause, nor, according to Gasparri, if he has celebrated the Mass of the Presanctified, which is not a Mass in the ordinary sense of the word.

[1] *Fontes,* n. 53, §2.
[I] Denz. 880.
[1] Alexander VII, Denz. 1138.
[4] Denz. 1x39.
[1] E.g. Noldin, *Theol. Moralis,* III, §143 c.; Prüinmcr, *'YIχoI. Moralis,* IΠ, Ç194.
[•] *Tbtol. Moralis,* VT,§z66.
[7] Gasparri, *De Eucharistia,* I, §449.

VIL INDULGENCES

GENERAL RULES REGARDING INDULGENCES

227.—Indulgences: Usual Conditions

Does the phrase "on the usual conditions", which often occurs in plenary indulgences, imply that a visit to a church is necessary in addition to receiling the sacraments and prayingfor the Pope's intentions?

Misunderstandings about the conditions necessary for gaining indulgences are wont to arise from the efforts of writers or editors of pious books to simplify and co-ordinate indulgenced prayers. In some earlier collections, including official ones, the simplification took the form of stating that a visit to a church or public oratory was not required unless expressly stated in the rescript granting the indulgence. In some cases this visit is required, in others it is not required. This is still the situation, but the rule is now stated rather differently, namely that a visit to a church or public oratory is required and is included in the term "suetis conditionibus", unless it is expressly stated that it is not required. *Praenotandum* 4 of the most recent official collection is as follows: "Conditiones, quae pro acquirendis plenariis indulgentiis, in hac collectione contentis, ordinario praescribuntur, quaeque per notam clausulam 'suetis conditionibus' designantur, sunt: Confessio, Communio, visitatio ecclesiae aut publici vel (pro legitime utentibus ad normam can. 929) scmipublici oratorii et oratio ad mentem Summi Pontificis. In casibus vero, in quibus omnes recensitae conditiones non requiruntur, eae, quae necessariae sunt, singulatim in propriis locis adnotantur."[1]

The reason, no doubt, for the slight verbal change is that the great majority of plenary indulgences do require the visit, and it is the exception for it not to be required. Some collections, e.g. *Plorilegium,* Bruges (1955), indicate in each instance whether three or four conditions are required, according to whether the visit to a church is included or not. For the purpose of simplifying a matter which is becoming most intricate and confusing for the faithful, we are of the opinion that it is better to follow the phrasing of the recent official Roman collection, and to explain to the faithful that the *usual* conditions arc four, not three. The commentators are all agreed that a visit to a church or public oratory is sufficiently fulfilled on the occasion of receiving the sacraments therein. Also the terms of canon 929 should be noted, by which the inmates of religious houses are permitted to visit their own chapel for the fulfilment of this condition, even though it is not a public oratory.

[1] *Preces et Pia Opera,* p. viii.

228.—Indulgences: Reception of Sacraments

The Church has attached a plenary indulgence once a month (i.e. within thirty days), on the usual conditions to the daily recital of very many prayers. A person says daily sixty of these prayers, and in the course of each month (or thirty days) makes sixty visits to a church and says the "Pater", "Ave" and "Gloria" sixty times for the Pope's intention. He goes regularly to confession about once a fortnight and to Communion every Sunday, and he holds that he can gain all these indulgences (and indeed all ordinary plenary indulgences during the years) because all the days of indulgences—whether of the Church's or of his own fixing—come within the nine days allowed by canon 951, §i, for Communion and the sixteen days allowed for confession. Is he right?

Canon 931, §1: Ad quaslibet indulgentias lucrandas confessio forte requisita peragi potest intra octo dies qui immediate praecedunt diem cui indulgentia fuit affixa; communio autem in pervigilio eiusdem diei; utraque vero etiam intra subsequentem octavam.

Canon 935: Uni eidemque rei vel loco plures ex variis titulis adnecti possunt indulgentiae ; sed uno eodemque opere, cui ex variis titulis indulgentiae adnexae sint, non possunt plures acquiri indulgentiae, nisi opus requisitum sit confessio vel communio, aut nisi aliud expresse cautum fuerit.

Canon 933 explicitly permits more than one indulgence to be gained by fulfilling the condition of confession and Communion which may be common to them all. Most of us are more familiar with the rule of §3 in canon 931, by which a fortnightly confession or daily Communion suffices for gaining all indulgences except the Jubilee. A person may be so circumstanced that daily Communion is not desired, in which case he is entitled to compute the *tempus utile* for the reception of these sacraments according to canon 931, §1. Applying to the case the rule of canon 933, it must follow that several indulgences can be gained by fulfilling once the condition of confession and Communion within the terms of that canon. Cf. Tummolo-Iorio, *Theol. Moralis,* II, §1055; Gougnard *De indulgentiis,* p. 58.

229.—Confession and Indulgences

Am I correct in holding that, for a daily communicant, the fortnightly confession is not absolutely necessary for gaining the ordinary indulgences to which confession is attached as a condition?

This is a correct deduction in the case of a daily communicant who is not conscious of grave sin. It is deduced, firstly, from the terms of canon 95U §5: "Christifideles qui solent, nisi legitime impediantur, saltern bis in mense ad poenitentiae sacramentum accedere, aut sanctam communionem in statu gratiae et cum recta piaque mente recipere quotidie, quamvis semel aut iterum per hebdomadam ab eadem abstineant, possunt omnes indulgentias consequi, etiam sine actuali confessione quae ccteroquin ad eas lucrandas necessaria foret, exceptis indulgentiis sive iubilaei ordinarii et

extraordinarii sive ad instar iubilaei." It is clear from the wording of the canon *(ant}* that daily Communion is an alternative to bi-monthly confession.

The terms of the canon recall a decree of 1763 by which Clement XIII declared that weekly confession sufficed; in order to encourage daily Communion, Pius X, *S.C. Indnlg.,* 14 February, 1906, decreed that daily communicants could use the Clementine induit without going to confession weekly.

Noldin, accordingly, does not hesitate to draw the rigidly logical conclusion that there is now absolutely no time limit between confessions, in the case of daily communicants who desire to gain indulgences to which confession is attached as a condition: "Ad lucrandas igitur indulgentias per hebdomadam occurrentes pro iis, qui fere quotidie communicant, confessio non amplius requiritur: non ea, quae alternis hebdomadis, nec ea quae singulis mensibus; immo nec ea quae singulis semestribus vel annis fiat."[1]

230.—Jubilee Confession and Communion

May we not now hold that a Jubilee confession can be made on the eighth day before the beginning of the Jubilee, the Jubilee Communion on the vigil of the opening day, and both confession and Communion within the octave of the Jubilee closing day ?

Many of the general principles concerning indulgences given in the Code and reprinted in the collection *Preces et Pia Opera* apply also to the Jubilee. But the Code itself provides for certain exceptions, as in canon 931, §3, and we are all aware of the disturbance and commotion caused by a Jubilee in such things as the suppression of many usual indulgences, and consequently of the general rules applying to them. Taking the Holy Year as the pattern of all Jubilees, it seems evident from the ceremony of opening and closing the Holy Door that all the conditions must be fulfilled during the period assigned, and many of the earlier bulls make this quite certain. In the more recent Jubilee bulls which we have examined the phrase used is not quite so explicit, nor is it expressly stated that the rule of canon 951, §1, is not applicable to the Jubilee confession and Communion. Whatever doubts there may be, having regard to the words of canon 931, §1 : "Ad *quaslibet* indulgentias lucrandas" and such familiar axioms as "favores sunt ampliandi", we can find only one author who draws the conclusion suggested by the question.

Ferreres, after explaining canon 931, observes that the Jubilee exception in §3 is not mentioned in §1: "Cum haec exceptio non habeatur in §1, ea quae . . . dicuntur valere videntur etiam pro indulgentiis iubilaei, maxime cum illic canon dicat: ad quaslibet indulgentias lucrandas."[2] Personally, we would not act on this opinion, but it is a logical interpretation of the law and those who care to do so may accept it.

Most of those who advert to the matter do not agree with Ferreres. Gcnicot-Salsmans: "Confessio in vigilia iubilaei facta non certo prodest ad lucrandas indulgentias quia non constat iubilaeo applicari posse canon 931"3; Gougnard "Confessio requiritur omnino specialis infra tempus iubilaei peragenda; ita ut, nisi aliud concedatur, non sufiicat confessio . . .

[1] *Theol. Moralis,* 111, §321.
[2] *Theol. Moralis,* II, §795.
[3] *Theol. Moralis,* II, §412.

quae ante tempus iubilaeo praefixum, etiamsi tantum pridie, nec die ipsa ante primas vesperas, quando agitur de anno sancto, institueretur."[1]

231.—Indulgences: Foreign Missions

IPZw/ *indulgences are granted by the Holy See to those who assist the work of the Foreign Missions ?*

(i) In the first place there are the very considerable indulgences granted to all the faithful who become members of the A.P.F., the Holy Childhood, and other missionary associations. Since the foreign missions cannot function without material assistance, the indulgences are given to induce the faithful to join, and they continue in this respect a custom existing for many centuries. Some of the commonest indulgences in the ages of faith were granted to those who assisted in the building of churches, bridges and other works of public utility. In modern times the indulgence is granted to associations which exist for a charitable purpose, and the grant is made to members who fulfil the conditions, not specifically to those who give money to the charitable purpose.

(ii) Indulgences which may be gained by any of the faithful, whether they belong to a missionary association or not, are set out in *Preces et Pia Opera*, nn. 563-574:

Confession and Communion, prayer for the missions, and a visit to a church or public oratory. (Plenary indulgence monthly, n. 564.)

On the penultimate Sunday of October, A.P.F. day: Confession and Communion, prayer for the missions, and presence at any one of the sacred functions specially held on that day for the work of the missions. (Plenary indulgence, n. 565.) In places where no missionary functions are held it suffices to visit a church or public oratory. Those who do not receive the sacraments may gain seven years' indulgence by observing the other conditions alone.

There are, naturally, a number of prayers to which partial indulgences are attached, and a plenary indulgence may be gained monthly, on the usual conditions, in the case of certain of these prayers said daily. Thus: "St. Teresa of the Infant Jesus, Patron of the Missions, pray for us." (100 days, n. 531.) A longer prayer to the same saint recited daily, n. 573, gains a monthly plenary indulgence on the usual conditions.

(iii) Of particular interest to the clergy is the "Pia Unio Cleri pro Missionibus", erected by *Propaganda* in 1926, membership of which obtains many indulgences and other privileges. Like those attached to the A.P.F. and other associations, these privileges were curtailed in 1933 with respect to the faculties enjoyed for attaching indulgences to religious objects.[2] Members joining after 1 April, 1933, no longer have these very full privileges. But those still in force arc considerable, and they include plenary indulgences, on the usual conditions, obtainable on the following occasions: The Epiphany; feasts of the Apostles; St. Michael; St. Francis Xavier; once a month on any selected day; *in articulo mortis.*

[1] *Tractatus De Indulgentiis*, p. 71.
[1] Cf. *Tbe Clergy Review*^ XX1П, 1945, p. 42.

This Association has no immediate connection with collecting funds for the missions. Its purpose is to encourage interest and zeal amongst the clergy for the work of the foreign missions, and through the clergy to influence the laity in the same direction. The statutes were revised by *Propaganda,* 14 April, 1937.[1]

232.—A.P.F. Indulgences

Seeing that the indulgences granted to members of the A.P.F. may be gained only by those who are members, does it not follow that those who do not observe the conditions of membership, including the payment of a small annual sum, are not able to obtain the indulgences?

Canon 692: Ad fruendum associationis iuribus, privilegiis, indulgentiis, aliisque gratiis spiritualibus, ncccsse est et sufficit ut quis in eam valide receptus sit, secundum propria associationis statuta et ab ea legitime non expulsus.

The canon summarizes a decision *S.C. Indulg.,* 25 Jan., 18422: "Dummodo sodalitates sint canonice erectae, et sodales adimpleant opera iniuncra a Summis Pontificibus pro lucrandis indulgentiis suae respectivae Confraternitati adnexis, ipsique sodales legitime adscript! fuerint in Confratcrnitatem, inobservantia partialis, seu generalis statutorum non obest acquisitioni indulgentiarum, ex eo quod statuta sunt potius ad regimen et ad rectam Sodalitatis administrationem data, minime vero tamquam iniuncta opera ad indulgentias acquirendas." Lest the meaning of this decision should be misunderstood, a further phrase was added when the ruling was repeated the following year, 12 May, 18433: ". . . ad indulgentias acauirendas; quod si nonnulli statutorum articuli aliqua peragenda opera sodalibus proponant, quae ex Pontificia concessione ditata sint indulgentiis, ipsi tamquam essentiales habendi sunt, ut nullo modo variari possint, ne tali spirituali emolumento sodales sint fraudati". Therefore the observance of the statutes of the A.P.F. is not necessary for enjoying its privileges, except when the statutes determine that certain pious works are to be performed by those members who desire to gain indulgences.

A person who has become a member ceases to enjoy the indulgences and other privileges only by ceasing to be a member. This can happen in two ways. Firstly, he may be expelled by the association, according to the terms of canon 696, for a just cause. Secondly, he may renounce membership for any reason, but this docs not take effect until the resignation has been accepted: canon 72, §1: "Privilegia cessant per renuntiationem a competente Superiore acceptatam."

These canons, which arc applicable to all associations in the Church, clearly govern membership of the A.P.F. That the association should ever want to cast any member out is extremely' unlikely, even though crimes may be committed which are a just cause for expulsion. Similarly, that any member should go to the trouble of getting his resignation accepted is also

[1] *The Clergy Review,* XIV, 1938, p. 77. Eng. Tr. of the Statutes, *Ecclesiastical Revie».* January 1938, p· 52.

[2] *Fontes,* n. 5022, ad 2.

[3] *Ibid.,* r.. 5050·

unlikely. Usually the member, who does not pay the minimum annual subscription determined by the statutes, neglects this duty either because he has forgotten or because he has lost interest in the A.P.F. and in its privileges. A person who deliberately neglects the statutes while, at the same time, enjoying the privileges of membership, including the gaining of indulgences offered, cannot be accused of any sin, since the statues do not bind under sin.

§2. STATIONS OF THE CROSS

233.—Erecting Stations of the Cross

Since tbe regulations are often modified considerably, wouldyon state whatformalities are now necessaryfor tbe valid erection of tbe Stations of the Cross in a new (secular) parish church ?

In order that the indulgences attached to the Stations may be obtained it has always been necessary (1) to enjoy the requisite faculties of erection; (2) to use a lawful form of blessing, which includes the blessing of the wooden crosses. There is no particular difficulty about the latter condition, and it is usually held that the general *sanatio* given from time to time by the Holy See refers only to defects in the former condition, namely the faculties of erection.

Until 12 March, 1938, the consent or delegation of various people was required under pain of nullity: a faculty from the Holy See or from the Franciscans (Friars Minor); the permission of the local Ordinary; the consent of the rector or religious authority of the Church. Usually a printed formula containing these documents on one sheet was employed, since it was also necessary for validity that the various faculties, etc., should be in writing.

In order to facilitate the erection of Stations and minimize the risk of invalidity, the *Sacred Penitentiary,* 20 March, 1938, simplified the procedure, declaring: "abrogatis singulis conditionibus hactenus vigentibus, benigne decernere dignatus est ad validam stationum 'Viae Crucis' erectionem sufficere ut sacerdos, idcirco rogatus, debita facultate sit praeditus, iuxta Decretum 'Consilium suum persequens' datum dic 12 (20) Martii, 1933". So far as the validity of the act is concerned, the only necessary preliminary is to have obtained the faculty of erection, which some ecclesiastics possess by the common law and others must obtain by delegation. The use of the prescribed form, and particularly the necessity of having wooden crosses, are in no way changed by this decree.

The people most seriously affected are the Friars Minor. Since 20 March, 1933, the faculty which they used to enjoy of delegating any priest to erect the Stations has been withdrawn, and their power in this respect is restricted to their own preachers and confessors.

Cardinals, from canon 239, §1.6, possess the faculty, which also entitles them to erect Stations "sub unica benedictione", that is to say without using the formula in the *PJtuale Romanurn.*

All bishops, including titular bishops, have the faculty, from canon 349,

§1.1: "ritibus tamen ab Ecclesia praescriptis"; that is to say they must use the form in the *Rituale Romanum,* Benedictiones Propriae, n. 1, and the use of this form is *a fortiori* obligatory on all others who obtain a delegated faculty. The vicar general does not enjoy the faculty, nor may bishops delegate their powers even *per modum actus.*[1]

The major superiors and local superiors of the Friars Minor, by an ancient privilege, enjoy the faculty, and priests of the Order may obtain delegated faculties from their superiors.

All other priests must obtain the faculty from the Holy See. Bishops may not, indeed, by the common law, delegate their priests, but the power to do so is often obtained. It is included, for example, in the faculties granted by *Propaganda.*[2]

The new decree says nothing about the necessity of delegation being in writing, and we may conclude that it is no longer absolutely necessary for the validity of the act. This is, at least, the official view taken by the authorities of the Franciscans: "Delegatio tamen, quae fieri potest a Superioribus Ordinis nostri erga proprios subditos, quando ipsi personaliter facultate hac uti nolunt, non amplius requiritur ut sit in scriptis data ad validitatem delegationis et subsequentis erectionis; cum nec ullibi in Codice, nec in citato decreto S. Poenitentiariae hoc praecipiatur."[3] Nevertheless, for the lawful erection of Stations, delegation should be in writing, and likewise the act of erection should be recorded in writing, in order to establish these facts beyond all doubt.

The written approval of the local Ordinary, formerly required for validity, is now required as a proper measure of order and discipline. As the recent decree states: "prorsus tamen decere, ratione praesertim ecclesiasticae disciplinae, ut singulis vicibus, nisi agatur de locis exemptis, accedat venia Ordinarii loci, ubi facultas exercetur, saltem rationabiliter praesumpta, quando Ordinarius facile adiri nequeat".

The rector of a secular church may, accordingly, seek the faculty himself from the Holy See through the Ordinary, or permit the act of erection to be performed by a Franciscan delegated by his superiors. Nothing more is required for validity. To be lawful, the Ordinary's permission should also be obtained, and a document should be drawn up, signed and dated, containing the delegation, the Ordinary's permission, and a record of the fact of erection.

234.—Erecting Stations: Delegation

On applying to the episcopal curia for a faculty to erect the Stations, I was informed that it would be necessary to obtain it from the Holy See. the Ordinary enjoys this privilege but he may not delegate it even "per modum actus," and by "Ordinary" in this connection is meant the bishop but not the vicar general. What is the canonical reason for these restrictions?

Canon 349, §1.1: Ab accepta authentica notitia peractae canonicae

1J. *Poeni/.,* 10 November, 1926.

* Vromant, *Facultates Apostoticae,* 1938, §122.

* *Acta Ordinis Minorum,* LVII, 1938, pp. 206-7, quoted in *Collectanea Mecbliniensta,* 1938, p. 266.

provisionis, Episcopi sive residentiales sive titulares: praeter alia privilegia quae suis in titulis recensentur fruuntur privilegiis de quibus in can. 239, §τ, nn. 7-12; nec non . . . nn. 5, 6, ritibus tamen ab Ecclesia praescriptis. (Canon 239, §1, 6, contains the privilege of erecting Stations.)

Canon 66, §2: Nisi in earum concessione electa fuerit industria personae aut aliud expresse cautum sit, facultates habituales . . . concessae Episcopo competunt quoque Vicario Generali.

Canon 368, §1: Vicario Generali, vi officii, ea competit in universa dioecesi iurisdictio in spiritualibus ac temporalibus, quae ad episcopum iure ordinario pertinent, exceptis iis quae Episcopus sibi reservaverit, vel quae ex iure requirant speciale Episcopi mandatum.

Canon 913: Inferiores Romano Pontifice nequeunt facultatem concedendi indulgentias aliis committere, nisi id eis a Sede Apostolica expresse fuerit ind ultum.

S. Poenit., 10 November, 1926: S. Poenit. Apost. die 18 Julii, 1919, declaravit, non licere Episcopis communicare Presbyteris suae ditionis habitualiter potestatem benedicendi Rosaria, etc., de qua in can. 349, §1, n. i, Codicis iuris canonici, cum Indulgentiarum applicatione; nunc quaeritur:

1. Licetne Episcopis communicare, saltem per modum actus, Sacerdotibus suae ditionis facultates, de quibus in can. 349, §1, n. 1, Codicis iuris canonici ?

2. Eaedem facultates competuntne etiam Vicario Generali ?

Et eadem Sacra Poenitentiaria, re mature perpensa, respondendum censuit: Ad utrumque *Negative.*

(i) A faculty is necessary for erecting Stations because of the indulgences attached thereto. In so far as the privileges mentioned in canons 349 and 239 concern indulgences, it is quite clear that the law of canon 913 forbids their communication to any person whatever without an Apostolic induit for the purpose.

But there is a further reason applicable to all the privileges of canon 349, §1.1, and not merely to those which are concerned with indulgences. It is to be discerned in the fact that the powers conferred on bishops in this canon are "privileges" not "ordinary" powers: they are given as a mark of honour to one who has received episcopal consecration and therefore apply to titular as well as to residential bishops. The *Sacred Penitentiary* as early as 18 July, 1919, decided that these powers could not be communicated *habitually* to other priests,[1] and the reply of 10 November, 1926, declares that they cannot be given even *per modum actus?* because the same principle applies in each case. If these powers were enjoyed from "ordinary" jurisdiction it would follow automatically from canon 199, §1, that they are capable of delegation, "nisi aliud expresse iure caveatur". From the definition of "ordinary" jurisdiction in canon 196, it appeared to many, before the point was settled by the Holy Sec, that certain of the powers in canon 349, §1.1, could be delegated, and it must be admitted that there is a very thin line of difference between powers which are "ordinary" and those which are annexed *de iure* to an office as a "privilege". However, the clause in canon 199, §1, "nisi aliud, etc.", makes ample provision for restrictions

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[1] *A.AS.,* XI, 10x9, p. 332; *Periodica,* 1921, p. 95.
• *A.AS.,* XVIH, 1926, p. 500; *Periodica,* 1926, p. 234.

on the communication even of powers which arc indisputably "ordinary", and these restrictions are now expressly established.

(ii) Exactly the same line of reasoning must be employed with regard to the vicar general. Canon 368 declares his competence to exercise whatever powers the Bishop possesses through "ordinary" jurisdiction; but the list in canon 349, §1.1, is an enumeration of "privileges" not of "ordinary" powers; therefore they are not enjoyed by the vicar general.

But, it may be objected, canon 66, §2, is within a title headed "De Privilegiis" and it asserts the vicar general's competence to exercise faculties, e.g. the quinquennial faculties, granted to his bishop. It does so, however, with the clause "nisi aliud, etc.", which is now clearly verified in the reply of the *Sacred Penitentiary,* 10 November, 1926.

235.—Crosses of the Stations

If is understood that the crosses of the Stations should be of wood. Is this absolutely necessary for their valid erection with a view io gaining the indulgences? There are many examples in which the wooden cross is absent. In other examples the wood is disguised so as to look like some other material.

The only absolute requirement in the material of the Stations is that the cross must be of wood. It is the prescription of the *Rjtuale Romanum* contained in the rite of erection: "Benedicit quatuordecim cruces, quae ex ligno esse debent,"[1] and the rule has been insisted upon repeatedly by the Holy See. That this rule must be observed *sub poena nullitatis* is certain from a decision of *S.C. Indulg.,* 23 November, 1878: "An illud *ex ligno debent esse cruces* quod legitur in Appendice ad Rituale Romanum . . . obliget sub poena nullitatis. *Resp.* Affirmative."[2]

If the wooden crosses are hidden or concealed beneath the material of the picture or carving, so that they cannot be seen by the faithful, it is commonly taught that the same consequence of invalidity follows.[3] It is permitted to gild or paint the wood, provided that it is not so camouflaged as to appear to be of some other material. One would hesitate to say that the non-observance of this rule invalidates the erection. The practice is, at least, risky and undesirable: "cruces debent esse visibiles *qua ligneae* et haec est ratio cur color aut ornamenta apposita debeant moderate apponi. Secus cruces jam non viderentur ligneae, et esset periculum nullitatis erectionis".[4*] To gain an indulgence the conditions must be observed, and the indulgence is by the direction of the Church attached to the blessed wooden crosses, and to no other part of the Stations, no matter how artistic and precious they may be.

In answering the complaint of a *curé* who, with many others, had erected a *stucco* set of Stations containing a cross of the same material, a writer in *^Ami du €lergé* offers some consolation in the reflection that devotion to the

[1] Appendix to Roman Ritual, *Benedictiones Propriae,* η. i.

[*] This decree is cited as n. 442 of the *Decreta Authentica* of the Congregation. It is not in *Fontes,* VII, but it may be seen in such collections as Ferraris, *Bibliotheca, Supplement,* IX, P. 756.

[*] Cf. Gougnard, *De Indulgentiis,* p. 101.

[4] *Collationes Brugenses,* 1926, p. 231.

[»] 1929, p. 67.

Passion of Christ may be fostered, even though the indulgence is certainly not gained. That is true. But it also seems that Church furnishers should be acquainted with the law, and that they would have no grievance if these defective sets were returned in order to be properly constructed. The simplest method of *sanatio* is to erect wooden crosses, properly blessed, over an existing set of Stations which are invalid so far as gaining the indulgence is concerned. It is for this reason that the Holy See does not usually dispense from this requirement, though examples are cited permitting the retention of non-wooden crosses for the purpose of the indulgence.[1]

236.—Removal of Stations

The Stations were removed from a church during the total renovation of the interior, and it is now proposed to erect them in a different order, i.e. beginning from the gospel side. Is it necessary to re-erect (canonically) the Stations if they have all been temporarily removed, or if they are replaced in a different order?

(i) If the greater part of the crosses has been removed, that is to say more than seven, the faithful cannot gain the indulgences during the time of their absence,[2] nor can the indulgences be gained if the Stations are temporarily erected in a different building during the period of church renovation. But, once they are replaced in the building from which they were taken, no second blessing or re-erection is necessary[3]: "Si cruces primitus benedictae omnino pereunt, iterum canonica erectio necessaria est; si pereant ex minori parte, licet alias illis substituere absque ulla benedictione; si penitus tolluntur aliqua peculiari ratione, et ad tempus tantum, ut denuo eidem loco restituantur, nec erectione, nec benedictione opus est ad indulgentias lucrifaciendas."[3]

(ii) It is permitted to change the position of the Stations, as one desires, provided they remain within the original church. Whilst it is being renovated, for example, they could be placed temporarily in a side chapel.[4] It follows from this principle, which connects the indulgence with the building and not with any particular spot within it, that the position of the Stations may be changed without loss of the indulgences.[5]

Usually they are placed around the walls of the church, the first one being near the chancel, but we cannot discover any ruling as to the correct point of departure. It appears that in Ireland the gospel side is preferred,[6] and we believe this to be the common practice in England also. In our view the point must be decided in each case from the position of the painted or carved figures which usually accompany the crosses; and if this is not relevant (as when the Stations are on the nave pillars facing the worshippers), the gospel side near the chancel, the place of greater dignity, should be chosen for the first Station rather than the epistle side.

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[1] E.g. 18 September, 1880; *A.S.S.*, XIII, p. 319.
[2] *S.C. Indtdg.*, 16 December, 1760; 20 January, 1836; *Fontes*, nn. 4988.2 and 5005.1.
[3] 30 January, 1839; *Fontes*, n. 5011.3.
[4] 22 August, 1842; *Fontes*, n. 3028.4.
[5] 20 September, 1839; *Fontes*, n. 5013.3.
[6] *Irish Ecclesiastical Record*, XXVII, 1926, p. 534.

237.—Kissing a Stations Crucifix

The Sacred Penitentiary, 22 September, 1942, *has decided that the plenary indulgence obtained by kissing a crucifix is operative only at the hour of death. Does this rule apply even to a Stations crucifix l*

S. Poenit., 22 September, 1942; *A.A.S.,* XXXIV, p. 303: Aliquo iam tempore, magna cum fidelium admiratione, Crucifixi imagines praebentur, auibus asseveratur Indulgentiam plenariam adnexam esse, ab infirmis lucran-am quotiescumque iidem, corde contrito et amoris dolorisque actum elicientes, unum ex hisce Crucifixis osculavcrint; quos quidem dicunt ab aliquo Praelato, ex peculiari a Summo Pontifice accepta facultate, fuisse benedictos.

Nec desunt qui praesertim ad hoc sacrum Tribunal recurrerint, ab eodem postulantes utrum haec gratia reapse, ut exponitur, concessa fuerit; itemque significantes rem, utpote omnino extraordinariam, haud mediocrem commovisse admirationem.

Quamobrem hoc sacrum Tribunal—cuius est de Indulgentiarum concessione et usu iudicare—ad falsam praecavendam interpretationem circa S. Matris Ecclesiae hac in causa benignitatem, non modo opportunum, sed necessarium ducit illas Declarationes in omnium memoriam revocare hac super re iam editas; illam nempe Supremae S. Congregationis S. Officii d. d. 10 mensis lunii a. 1914 *{Acta Apost. Sedis,* Vol. VI, pag. 347), et alteram Sacrae huius Poenitentiariae d. d. 23 mensis lunii a. 1929 *{Acta Apost. Sedis,* Vol. XXI, pag. 510). Atque iterum declarat Crucifixos, qui nostris etiam hisce temporibus eiusmodi gratia ditati distribuuntur, ad normam harum Declarationum benedictos censendos esse; ita ut Indulgentia plenaria solummodo in articulo mortis lucrifieri possit, necessariis habitis conditionibus.

Preces et Pia Opera, n. 164, b: Easdem indulgentias (plenarias etc. fidelibus qui pium exercitium *Viae Crucis* peregerint concessas) lucrari valent: Infirmi, qui vi morbi absque gravi incommodo vel difficultate pium exercitium Viae Crucis nec in forma ordinaria nec in forma supra statuta scilicet per recitationem viginti *Pater, Ave* et *Gloria* peragere possunt, dummodo cum affectu et animo contrito osculentur vel etiam tantum intueantur in Crucifixum ad hoc benedictum, eis a sacerdote vel ab aliqua persona exhibitum, et recitent, si possint, brevem aliquam orationem vel precem jaculatoriam in memoriam Passionis et Mortis lesu Christi Domini Nostri.

This interesting query arises from the fact that the Stations indulgence may be gained on merely kissing the crucifix, if the sick person is unable to recite any prayer at all. The 1942 decree limits the indulgence gained from kissing a privileged crucifix to the moment of death, and it would appear, therefore, that the Stations crucifix is similarly affected.

We would not, personally, draw this conclusion. For the above decree refers to crucifixes which are said to be (quos quidem dicunt) so privileged, whereas the concession attached to the Stations crucifix is most explicitly formulated in the official *Preces et Pia Opera.* The riches of indulgences have become, perhaps, embarrassing, and the Holy See has, in recent years, reduced them in many directions. But, on the ordinary principles of determining the sense of papal documents, the restriction of the above decree

is not to be applied, in our opinion, to the latter part of n. 164, b. It remains in force *toties quoties* pending a declaration that the indulgence in this abbreviated form may be gained only *in articulo mortis-,* or, what would amount to much the same thing, pending the deletion of the words "si possint".

§3. VARIOUS OTHER INDULGENCES

238.—Privileged Altar "Pro Defunctis"

May the privileged altar indulgence, obtained by a priest as a personal induit, be applied independently of the application of the Mass ?

S.C. Indulg., 19 December, 1885: Utrum Indulgentia Plenaria altaris privilegiati personalis debeat a sacerdote qui Actum heroicum charitatis emisit, applicari animae pro qua Missam celebrat ? *Pesp.* Affirmative.

25 August, 1897: An Indulgentia altaris privilegiati separari possit ab applicatione seu fructu sacrificii, quando sacrificium est celebratum pro defunctis ? *Pesp.* Negative.

J. *Poenit.,* 10 June, 1942: Utrum privilegium personale, in Motu Proprio *Summo Solacio,* d.d. 12 Mensis Maii vertentis anni, Sacerdotibus concessum, intelligendum sit ad tramitem Declarationis 3 *Poenit. Apost.* d.d. 8 Martii, 1829, ita ut sacerdotes, Sacrum litantes, in quolibet Missae sacrificio plenariam Indulgentiam lucrari et applicare possint, independenter a Missae applicatione, uni animae, in Purgatorio detentae, ab ipsis ad libitum designatae. *Pesp.* Affirmative.

As is customary in all indulgences at the present time, there are various species of the same concession, each species has its own conditions, and these conditions themselves arc liable to frequent change. A privileged altar may be *local, personal* or even *mixed',* the indulgence granted may be "pro defunctis", "pro vivis", "pro vivis et defunctis" or "pro agonizantibus". The present question is limited to the personal privileged altar "pro defunctis". There are certain decrees in the same sense as the two quoted above, issued by *S.C. Indulg.,* which clearly answer the question negatively, namely that the indulgence cannot be separated from the application of the Mass; there arc also other decrees in the same sense as that issued by J. *Poenit.,* 10 June, 1942, to the effect that the separation is permissible.

The apparent discrepancy may be removed by adopting the following solution: it is the will of the Holy See, in principle and as a general rule, that the two things may not be separated; but occasionally this separation is permitted. Some may think that the permission to separate the two things is now so common that it has become a general principle, and that the previous general principle has become obsolete. But, in our view, based on the commentators we have consulted, the correct answer is that separation is never permitted unless the induit dearly makes this concession. It is not usually conceded, for example, in the faculty priests obtain by joining various pious associations; but the conditions for each of these vary considerably, and to be quite certain it will be necessary to examine carefully the original, authentic and current rescript granting the privilege to members of an

association. Cf. *Collationes Brugenses,* 1897, p. 599; 1926,9. 51. Gougnard, *De Indulgentiis,* p. 126; *Ecclesiastical Review,* November, 1934, p. 510.

239.—Papal Blessing

Maj any priest who has preached a retreat or mission give the papal blessing at its close without previously obtaining special faculties for tbe purpose ?

The practice of closing a mission or retreat by imparting the papal blessing with a plenary indulgence is so common that it is sometimes supposed that anyone possesses this power *ipso facto* provided a retreat or mission has been given. This is erroneous, and the blessing with indulgence cannot validly be given unless the faculty has first been obtained, through some channel or other, from the Holy Sec.

It is easy to become confused in the matter of indulgences and the faculties of imparting them; and this particular one resembles others so closely and may be obtained in such various ways that the error of supposing that it may be granted without a faculty is, to some extent, excusable. In the first place it must be noticed that this papal blessing is something quite distinct from that which may be given by any priest to persons *in articulo mortis* from canon 468, §2; quite distinct also from that which may be given by bishops and other prelates from canon 914, and from that which all regulars may give in the circumstances of canon 915.

(i) The papal blessing with which we arc here concerned is that contained in the Appendix to the *Rituale Romanum,* n. 4: "Formula Benedictionis Papalis cum indulgentia plenaria in fine concionum." It may be used at the close of any retreat, mission, or series of sermons, and the rubric directs: . fiat unicum signum crucis cum Crucifixo, adhibita formula: Benedictio Dei omnipotentis, Patris et Filii Φ et Spiritus Sancti, descendat super vos, et maneat semper. R. Arnen".

(ii) The faculty to impart this blessing is usually enjoyed by all regulars who give missions and retreats. It could formerly be obtained by secular priests, together with other spiritual privileges, by joining some pious association such as the *Propagation of the Faith,* the *Apostolic Union, or* the *Sodality of Our Eady of Sorrows.* Unhappily for many of the younger clergy, this simple and attractive method of acquiring faculties was abolished by the decree *Consilium suumprosequens,* which came into force 1 April, 1933. The decree is not, however, retrospective, and all secular priests who obtained the faculties before that date retain them.

The spiritual favours enjoyed by members of the A.P.F. who joined before 1 April, 1933,1 are contained in the papal constitutions dated 20 February, 1924 and 25 March, 1924. The faculty under "D", n. 10, reads: "Facultas denique sacerdotibus zelatoribus, qui, de licentia Ordinarii, in forma exercitiorum sacrarum concionum seriem impleverint, impertiendi, novissima ipsorum concionum dic, Apostolicam christiano populo benedictionem, cum adnexa plenaria indulgentia, ab iis lucranda, qui saltem

1 The faculties attached to this and other associations are conveniently set out in the *Ploriltgium* edited by Schrevcl and Legrand iDcscléc, 1933), PP· 297» 348, 364.

quinque adfuerint concionibus, et confessi ac sacra Synaxi refecti ad mentem S.P. oraverint." The word "impleverint" primarily applies to the priest who has himself preached the sermons, but we are of the opinion that it applies also to any priest who effectively supervises the spiritual exercises. All favours are to be liberally interpreted, and the equivalent faculty, n. 99, granted to missionary countries clearly includes the supervisor.

It may well be that, in spite of the above decree of 1933, this faculty and others can still be obtained by joining some association or other which has come into being, with special privileges, since that date. Changes in indulgences and the methods of obtaining them are so frequent and so baffling that it would be rash to assert that the method is no longer existent. However, supposing this channel to be closed, a priest who desires the faculty *habitually* must apply for it through his Ordinary to the *Sacred Penitentiary.* Lacau gives an example of a particular induit of this kind which runs as follows: "Impertiendi, cum Crucifixo et unico signo crucis, in postrema concione, papalem benedictionem cum adnexa plenaria indulgentia, etiam animae alicuius fidelis in Dei gratia vita functi applicabili, ab iis Christifidelibus confessis ac sacra synaxi refectis lucranda, qui postremae eidem concioni adfuerint, et quatuor saltem alias ex praecedentibus audierint, ac insuper ad mentem Summi Pontificis pie oraverint."

Finally, a faculty may be obtained by any priest *per modum actus,* that is to say for use on some specified occasion. The power to grant it is in n. xxxvi of the faculties *(Formula Tertia)* given to Ordinaries subject to *Propaganda,* and the power to grant the indulgence—though not the papal blessing—is found in the quinquennial faculties given to Ordinaries in these parts of Europe.

(iii) The conditions are not uniform, and to be quite correct one should consult the document granting the privilege. In all of those we have examined the faithful desiring this indulgence must go to confession, receive Holy Communion, visit a church or public oratory and pray for the Pope's intention, for which one *Pater, Ave* and *Gloria* suffices: these are what is now meant by "suctis conditionibus", and they will usually be observed by the mere fact of attending a retreat or mission. In addition, seeing that the concession is for the people who have attended, the faculty usually requires that they shall have been present at a certain number of the sermons given.

240.—Indulgenced Crucifix

If a crucifix has been indulgenced for a happy death, is it true that it can be of use only to one person, and must therefore be re-indulgenced before being given to another?

As in the whole matter of indulgences, various types of indulgenccd crucifix exist, their origin dating mostly from times when the common law did not permit, as it now docs from canon 468, §2, the Apostolic blessing with plenary indulgence to be granted by any priest assisting the dying. Individuals obtain crucifixes so indulgenced for their own use; priests obtain the faculty of blessing a crucifix for the use of the person to whom it is given; even religious superiors of hospital nuns obtain the faculty of attaching to the crucifixes carried by the religious a plenary indulgence for

the sick under their care. All such indulgences are more *personal* than *real,* and they still exist.

The more familiar kind, with which the above query is concerned, is a *real* indulgence; to a crucifix blessed by the Pope, or by a priest possessed of the faculty, is attached a plenary indulgence in the hour of death *toties quoties.* On the friendly principle, we suppose, of "favores sunt ampliandi", the belief became current that a plenary indulgence was gained as often as anyone at any time kissed the crucifix. This interpretation was rejected by the *Holy Office,* 10 June, 1914, and at the same time the true nature of these concessions was explained in a text which was later reissued by the *Sacred Penitentiary,* 23 June, 1929, and referred to in the decree, 22 September, 1942: "Facultas benedicendi Crucifixos cum indulgentiae plenariae applicatione, *toties quoties* nuncupatae, sive personaliter a Summo Pontifice, sive quomodocumque ab Apostolica Sede, per tramitem cuiuslibet Officii vel personae obtenta, ita et non aliter est intelligenda, ut quicumque christifidelis, in articulo mortis constitutus, aliquem ex huiusmodi Crucifixis benedictis, etiamsi illi non pertineat, osculatus fuerit vel quomodocumque tetigerit, dummodo confessus ac sacra Communione refectus, vel, si id facere nequiverit, saltem contritus, SSmum nomen lesu ore, si potuerit, sin minus corde devote invocaverit, et mortem, tamquam peccati stipendium, de manu Domini patienter susceperit, plenariam Indulgentiam acquirere valeat. Contrariis quibuscunque, etc." The indulgence is gained once, *in articulo mortis,* by any persons whatsoever, including, of course, the priest who owns the crucifix, provided the above conditions are observed. Cf. A. Legrand in *Collationes Brrgenses,* 1927, p. 288; Gougnard, *De Indulgentiis,* p. 147; Q. 237.

241.—Faculty for Rosary Indulgences

To whom must rosaries be sentfor an indulgenced blessing?

There are at least seven different rosaries to which indulgences of various kinds may be attached. The most familiar is that associated with St. Dominic, composed of a set of beads representing a third part of the devotion, which consists of fifteen decades of the *Ave Maria,* each beginning with a *Pater Noster.* Their recitation is accompanied by meditation on the mysteries they recall. In order validly to attach to a rosary the full indulgences conceded by the Church, it is necessary for the article, properly constructed, to be blessed by a priest enjoying the faculty and with a prescribed form. We say "the full indulgences" because very ample indulgences may be gained without having the rosary specially blessed. The details of these indulgences may be seen in *Preces et Pia Opera,* η. 360, and it would serve, we think, no useful purpose to reprint them here. It is not necessary to advert explicitly to the precise indulgences one is gaining. From canon 925, §2, it suffices to have a general intention of acquiring whatever indulgences are conceded.

What indulgences can be attached to the crucifix ?

The indulgences attachable to a crucifix are, of course, quite distinct

from the rosary indulgences, though there is no reason why an indulgenced crucifix should not be permanently united to a rosary. The indulgence may take the form of attaching to a properly constructed crucifix the indulgences of the Stations of the Cross, or it may take the form of attaching to it a plenary indulgence to be gained at the hour of death. Cf. QQ. 237 and 240.

Can secular priests obtain powers to indulgence rosaries'? Where are these powers to be obtained? Is the permission of the Ordinary required for the lawful use these powers?

Any secular priest can obtain the powers referred to in the previous questions. Up to 1953 some of these faculties were most conveniently obtained by joining a pious association, such as the A.P.F. A decree of the *Sacred Penitentiary,* 20 March, 1933, abrogated these privileges in large measure, but priests already in possession of them retain their powers; the law was not retrospective.

Subsequent to this decree, any secular priest may obtain the requisite faculties by applying, through his own Ordinary, to the *Sacred Penitentiary.* It is no longer permitted to obtain certain of them from the Religious Order to which they were originally granted, e.g. the Dominicans in the case of the rosary, the Franciscans in the case of the Stations crucifix.

Except that his intervention is required in forwarding a petition to the Holy See, no special permission of the Ordinary is necessary, once the powers have been duly obtained through him. It is recommended, therefore, that a secular priest desiring these faculties should send a list of the things he desires to his Ordinary, and whatever is usual or possible will be obtained for him; very likely there will be a small tax for curial expenses. In using the faculties the formula of the *Ritual* must be employed, for validity, unless it is expressly conceded that a simple sign of the Cross suffices.

242.—Additions to The Rosary

7i

Is it true that the Holy See has discountenanced the custom of adding certain words to the first part of the "Ave Maria", an addition which is common in some parts in order to recall the mystery to mind? Also, is it permitted, without endangering the indulgences, to recite "Requiem Aeternam, etc." in place of the "Gloria Patri" when saying the Rosary during November for the dead?

(i) It is true that the *Sacred Penitentiary,* 27 July, 1920, gave a negative answer to the query whether, in view of canon 934, §2, the custom of adding words to the *Ave Maria* could be continued without prejudice to the indulgences attached. The concluding words of canon 934, §2, state that an indulgence attached to a prayer ceases "ob quamlibet additionem, detractionem, vel interpolationem". The custom in question is very widely spread in some parts, especially in Germany and in German-speaking Switzerland; it consists in adding, for example, to each *Ave Maria* in the last sorrowful mystery the words: "Der für uns ist gekreuzigt worden"—"Who was crucified for us".

Certain German and Swiss bishops, when this reply became known, informed the Holy See that the custom was of such long standing that it could not be removed without causing scandal and disturbance. The custom, in fact, goes back to the beginning of the fifteenth century and is of Carthusian origin.[1] It was sanctioned by Pius IX in 1859. Receiving these observations of the bishops, the *Sacred Penitentiary* issued another declaration, 22 January, 1921, which, practically speaking, revoked that of the previous year: "Itaque Sacra Poenitentiaria re mature perpensa censuit: (1) declarandum esse canonem 934, §2, Codicis luris Canonici continere legem generalem, quae indultum pianum nullimode revocat; (2) supplicandum SSmo pro extensione eiusdem indulti, favore omnium qui iuxta praedictum morem in quibuslibet locis SS. Rosarium recitare consueverint. Facta autem de praemissis relatione SSmo Dno. nostro Benedicto. . . . Sanctitas Sua enuntiatam declarationem approbavit, et indulti extensionem, uti supra, benigne concedere dignata est."[2]

(ii) An excellent definition of the rosary is that of the fourth lesson for the Feast of the Rosary in the Roman Breviary: "Est autem Rosarium certa precandi formula, qua quindecim angelicarum salutationum decades, oratione Dominica interiecta, distinguimus, et ad carum singulas totidem nostrae reparationis mysteria pia meditatione recolimus." It is beyond all dispute that the addition of *Gloria Patri* to each decade, to say nothing of the other additions at the beginning and at the end of the devotion, does not pertain to the integrity of the exercise and is not required for gaining any indulgences attached.[3] It is, nevertheless, an excellent custom, and is in conformity with the addition of *Gloria Patri* to the recitation of the psalms. But, since it is not essential, we are not forbidden to replace *Gloria Patri by Requiem Aeternam,* etc.; that is to say the rosary remains the rosary with all its indulgences.[4]*

What is lawful is not always expedient, particularly in public prayers and devotions which the faithful arc accustomed to perform in one particular way. In giving these replies to the queries we are not recommending any changes in the public recitation of the rosary; on the contrary, *nihil innovetur.*

243.—Rosary of the Five Wounds

This tndttlgenced rosary is not mentioned in the recent "Preces et Pia Opera". May one conclude that it has been abrogated?

This rosary consists of five sections, each of which includes five *Gloria Patri* in memory of the Five Wounds of Our Lord, and one *Ave Maria* in honour of Our Lady of Sorrows. If the rosary is blessed by a priest enjoying faculties granted through some channel by the Holy See, various partial indulgences and, on certain days, a plenary indulgence, may be gained.[6]

The official collection of indulgences entitled *Preces et Pia Opera* is prefaced by some general rules, and n. 2 states that prayers and pious works

1 Beringer: *Les Indulgences,* I, p. 516.
* *A.A.S.,* XIII, 1921, p. 163.
8 Gougnard, *De Indulgentiis,* p. 231.
4 Cf. Fanfani: *De Rosario,* 1930, p. 3, n. 2.
6 Cf. Bcringcr, *Les Indulgences,* I, p. 498.

not included in this collection no longer enjoy indulgences; the rosary of the Five Wounds is not included. But the indulgence attached to it is not abrogated because the new collection is concerned only with general indulgences "pro quibus lucrandis non requiritur neque benedictio ab aliquo sacerdote regulari vel saeculari, facultate pollente, pietatis objectis impertita, neque visitatio alicuius pii loci determinati, neque inscriptio alicui piae sodalitati". An important application of this rule is in n. 360, which, after setting out the general indulgences attached to reciting the rosary (i.e. the common one of fifteen decades), adds: "Si in recitatione rosarii fideles de more utantur corona, ab aliquo religioso Ordinis Praedicatorum vel ab alio sacerdote facultate pollente benedicta, praeter supradictas indulgentias, alias acquiri possunt." Similarly, indulgences attached, for example, to a sodality such as *St. Stephens Guildfor Altar Servers,* remain in force, even though they are not mentioned in *Preces et Pia Opera.*

244.—Prayers Before and After Mass

Assuming that one says all the prayers in the Breviary and Missal assigned before and after Office or Mass, what must one do in order to gain the indulgences attached to tach one separately ?

The question has reference to the indulgences contained in *Preces et Pia Opera,* nn. 688–693, which are now to be printed in Breviaries and Missals. By reciting all of these prayers many partial and plenary indulgences may be gained on the same day. In many cases a partial indulgence is granted for the single recitation of a prayer, and a plenary indulgence if it is said daily for a month: for example, the *Adoro Te Devote* obtains five years for a single recitation, and a plenary indulgence, on the usual conditions, if recited for a month; if a person desires both the partial and the plenary indulgence, what is the minimum that he must do ?

Canon 933 : "Uni eidemque rei vel loco plures ex variis titulis adnecti possunt indulgentiae; sed uno eodemque opere, cui ex variis titulis indulgentiae adnexae sint, non possunt plures acquiri indulgentiae, nisi opus requisitum sit confessio vel communio, aut nisi aliud expresse cautum fuerit." An example of the application of the last clause in this canon is found in the rosary, which may be blessed with both Dominican and Crozier indulgences, both obtainable by one recitation.[1] In this case the rule of canon 933 is suspended by an express declaration to the contrary. Other cases which lack this express provision are governed by the rule that, apart from confession and Holy Communion, one and the same pious work will not gain several indulgences.

In the indulgences under discussion, confession and Communion suffice for all according to the directions of canon 931. The other conditions must be repeated for each indulgence one desires to gain. For example, if prayer for the Pope's intention is required, *Pater Ave* and *Gloria* must be recited not once, but as many times as there are indulgences.

With regard to the cumulation of a partial and a plenary indulgence attached to the same prayer, various views are possible. It could be main-

[1] *S.C. Indulg.,* 12 June, 1907.

tained, wc think, that the last clause of canon 933 is verified in the terms of the grant, c.g. *Adoro Te Devote:* "Indulgentia quinque annorum; plenaria suetis conditionibus, quotidiana rythmi recitatione in integrum mensem producta." Five years arc gained each day, and a plenary indulgence at the end of the month. Or it could be said that a person intending to gain the plenary indulgence does not obtain each day the partial one, owing to canon 933; if for any reason he does not persevere for a month, he then gains the partial indulgence. Another view might be that he gains each day the partial indulgence, and at the end of the month a plenary indulgence, not precisely for the prayers already said but by accomplishing a distinct good work, namely persevering in the prayer for a month.

People often ask questions about indulgences, dealing with methods for gaining as many as possible with the minimum of pious work. It is a perfectly legitimate mental exercise and appears, at first sight, to be encouraged by the wealth and variety of indulgences offered for our choice, and the notable differences of proportion between them. The Church has always directed certain prayers to be said by the priest before and after Mass, although the precise nature of the obligation may be in dispute. It would be interesting to know whether any of the clergy, who have not been accustomed to recite them, are now doing so in order to gain the new indulgences which have been more publicly promulgated.

245.—"En Ego" Indulgence

The plenary indulgence may be obtained each time the conditions are fulfilled. Does this mean that it may be obtained several times a day? If so, would it be necessary on each occasion to say, for the Pope's intention, six times the Pater, Ate and Gloria ?

Canon 928, §1: Indulgentia plenaria, nisi aliud expresse cautum sit, acquiri potest semel tantum in die, etsi idem opus praescriptum pluries ponatur.

Preces et Pia Opera, 1938, n. 171: Fidelibus, supra relatam orationem coram lesu Christi Crucifixi imagine pie recitantibus, conceditur: *indulgentia decem annorum; Indulgentia plenaria,* si praeterea sacramentalem confessionem instituerint, caelestem Panem sumpserint et ad mentem Summi Pontificis oraverint *(S.C. Indulg.,* 31 July, 1858; Y. *Poenit.,* 2 February, 1934).

P. xv, note (<?): Clausula "precandi ad mentem Summi Pontificis" plane adimpletur, adiiciendo ceteris operibus praescriptis recitationem ad eam mentem unius *Pater, Ave* et *Gloria,* relicta tamen libertate singulis fidelibus, ad normam can. 934, §1, quamlibet aliam orationem recitandi iuxta uniuscuiusque pietatem et devotionem erga Romanum Pontificem (J. *Poenit.,* 20 September, 1933; *A.A.S.,* XXII, p. 363).

(i) The plenary indulgence attached to this prayer, unlike many others of a similar character, is not limited to once a month, but may be gained each time the conditions arc fulfilled. But canon 928, §1, bars the gaining of this indulgence more than once a day. A priest, therefore, who may be saying three Masses may gain the indulgence only once, as Gougnard expressly notes in *De Indulgentiis,* p. 307, §1. The reason is that the clause

"nisi aliud expresse cautum sit" is not verified in the grant of the indulgence, n. 171.

(ii) The second part of the question docs not, therefore, call for a reply. But it may be noted that, in gaining this indulgence each day, it suffices to recite once only the *Pater, Ave* and *Gloria* for the Pope's intention. The recital of these prayers six times is the minimum required when the conditions of some indulgence require a visit to a church with prayer therein for the Pope's intention, as we are informed in note *(b)* of *Preces et Pia Opera,* p. xvi.

246.—2 November: Visit to a Church

IPTw/ *is the meaning of ". . . vel (J)ro legitime utentibus} semi-publicum oratorium . . ." in "Preces et Pia Opera", η.* 544 *? Does the clause mean, as seems to be implied in canon* 929, *that religious must use a public church if there is one attached io their house 1 What externs are included in the phrase "legitime utentibus" ?*

Preces et Pia Opera, 1958, n. j44: Fidelibus, quoties die secunda novembris aliquam ecclesiam aut publicum vel (pro legitime utentibus) semipublicum oratorium defunctis suffragaturi visitaverint, conceditur: Indulgentia plenaria. . . .

Canon 929: Fideles utriusque sexus qui, perfectionis studio vel institutionis seu educationis aut etiam valetudinis causa in domibus ecclesia vel publico sacello carentibus, de consensu Ordinariorum constitutis, vitam communem agunt, itemque personae omnes ad illis ministrandum ibidem commorantes, quoties ad lucrandas indulgentias praescribatur visitatio alicuius ecclesiae non determinatae, vel indeterminati alicuius publici oratorii, visitare queunt propriae domus sacellum in quo obligationi audiendi Sacrum iure satisfacere possunt, dummodo cetera opera iniuncta rite praestiterint.

5". *Poenit.,* 20 September, 1933; *A.A.S.,* XXV, p. 44: Disputantibus nec in eandem sententiam convenientibus viris doctis circa sensum ac vim clausularum "visitandi ecclesiam aut oratorium publicum vel (pro legitime utentibus) semipublicum" ... ad omnem in posterum dubietatem anxietatemque auferendam benigne declarare dignatus est, per visitationem ecclesiae vel (ut supra) oratorii, intelligi "accessum ad hoc vel illam". . . .

The original text of this indulgence, *A.A.S.,* VI, 1914, p. 378, lacked the restriction "pro legitime utentibus". The words were added in the 1929 edition of *Preces et Pia Opera,* and remain in the current book. It was noted in 1914, e.g. in *Periodica,* VIII, p. 207, that *per se* the permission conceded of visiting merely a semi-public oratory was a new departure.

(i) Although it is plainly stated in canon 929 that the faculty of visiting the chapel of the religious house (which, from canon 1188, §1, 2, is a semi-public oratory) may be used only by those houses lacking a public oratory or church, it is our opinion that "legitime utentibus" in n. 544 is not necessarily to be interpreted according to the terms of that canon. The declaration of 20 September, 1933, though chiefly concerned with defining the prayers to be said, makes it sufficiently clear that, whenever the phrase "visitantibus, etc." is found in the text of an indulgence, the visit may be made to whatever place one chooses amongst those mentioned. Canon 929 retains its force for those indulgences which require, without any

qualification, a visit to a church or public oratory. Thus, n. 96 as well as n. 544 have this qualification; n. 477 (£) has not; canon 929, in our view, applies to n. 477 (Z›)› but not to nn· 96 and 544- The reason for our view is that, otherwise, the qualification in nn. 96 and 544, i.e. the added words "vel (pro legitime utentibus) semipublicum", would have no particular force or meaning. Therefore, we think the answer to the first question is that the religious may visit either their public church or their semi-public oratory.

(ii) Those commentators, e.g. *Ecclesiastical Review,* October, 1932, p. 405, who think that "legitime utentibus" is a reference to canon 929, necessarily exclude all the faithful except those mentioned in the canon. If, however, the interpretation given above is correct, the phrase "legitime utentibus" must mean all the faithful who, with the permission of the superiors, visit the semi-public oratory: they may gain an indulgence therein exactly as they may satisfy the Sunday obligation of hearing Mass. Cf. Chretien, *De Poenitentia,* 1935, §383-3: "Visitatio oratorii scmi-publici de se non valet, nisi interveniat vel concessio expressa, v.g. pro die 2 Novembris, vel privilegium canonis 929 pro personis vitam communem agentibus."

(iii) It is, unhappily, to be admitted that the view we have given is as likely as not to be wrong, because indulgences and the conditions for obtaining them are not subject to any easily discernible logical principles. Therefore, if one desires to be on the safe side, the answer to the two questions put is that of canon 929: religious may not use their semi-public oratory unless no church or public oratory is attached to their religious house, and the faithful who may use this semi-public oratory' for gaining indulgences are exclusively those mentioned in the canon. There is, however, a simple solution of the problem from canon 935: a confessor may sanction, for appropriate reasons, a visit to the semi-public oratory, by using his powers of commuting the works required for gaining indulgences.

247.—Indulgence for Converts

When a convert doubtfully baptised is received into the Church he may, if he wishes, make bis confession after reception to some priest other than the one who receives him. In this case how is the plenary indulgence to be granted to the convert? Can the priest who hears the convert's confession impart the indulgence? Or can the priest who receives the convert sub-delegate the confessor for this part of the ceremony? Or can the priest who receives the convert at some time after his confession impart ibis indulgence omitted in the actual ceremony?

(i) There is good reason for doubting whether this indulgence still exists everywhere in England. In the prc-Code faculties given, for example, in Westminster, the power to grant it, together with a plenary indulgence in the hour of death, was contained under n. vi. On the promulgation of the Code, priests were informed that this n. vi was omitted and they were referred to canon 468, §2, which grants the faculty to all priests in the hour of death but makes no mention of converts. Moreover, this particular grant is not contained in the usual *pagella of* quinquennial faculties granted to Ordinaries. It can be obtained, and it is included in the faculties given by

Propaganda for missionary countries. Vromant, commenting on these faculties for Missions, notes that it can be delegated to priests by Ordinaries and requires the conditions of confession, Communion, and prayer for the Pope's intention. Our *Ordo Administrandi,* cap. iv, n. 4, suggests a form to be used "if the priest enjoys the faculty". If the priest has the faculty from his Ordinary it would be mentioned in the *pagella',* it is not mentioned in some of these documents, but it may be in others. The whole matter of indulgences is exceedingly difficult owing to their multitude, to the constant changes and modifications, and to the manner in which so many of them overlap.

(ii) Supposing every priest has the faculty from his Ordinary to grant this indulgence, we arc of the opinion that, the faculties being for the internal forum, the grant must be made by the priest in the confessional. If, on the other hand, the concession is given with the document permitting the reception of a convert, and which grants the faculty to absolve from censure in the external forum, the indulgence must be given by the priest who reconciles the convert publicly. Cf. Q. 19.

VIII. EXTREME UNCTION

248.—Hospitals and Spiritual Provision

Though canon law has its regulations concerning the rights of parish priests to bury subjects who have died outside the parish, I do not know of any provision for duties of parish priests towards their sick whilst they are in other parishes. The major part of the work in a parish in this country may be due to a hospital in the parish providing for the sick from neighbouring parishes, but not providing anything towards the maintenance of a chaplain. Is there no provision in the Church for some equitable distribution of these duties? Or does the liability fall on the parishioners of the particular parish to maintain a priest whose time may be mainly occupied, if he does the work conscientiously, in tending in the hospital the sick subjects of other parishes?

Canon 467, §1: Debet parochus officia divina celebrare, administrare Sacramenta fidelibus, quoties legitime petant . . . pauperes et miseros paterna caritate complecti. . . .

Canon 468, §1 : Sedula cura et effusa caritate debet parochus aegrotos in sua paroecia, maxime vero morti proximos, adiuvare, eos sollicite Sacramentis reficiendo eorumque animas Deo commendando.

Canon 2182: Parochum qui officia paroecialia de quibus in canon 467, §1, 468, §1 . . . graviter neglexerit aut violaverit, Episcopus moneat, in memoriam eius revocans et strictam obligationem qua eius conscientia oneratur et poenas in haec delicta iure statutas.

(i) The obligation of visiting the sick, which is an extremely grave one when they arc in danger of death, belongs in principle to the parish priest of the place where they happen to be, unless the hospital is exempt from his pastoral care. Frequently it will be found that local law supplements the Code by determining more in detail the obligations of the respective parish priests, when the parishioner of one is taken to a hospital in the parish of another. Thus the *Decreta et Praecepta,* 1924, of Nottingham, p. 30, directs the last sacraments to be given, if possible, before a person who is dangerously ill is taken to the hospital, and the chaplain of the institution is to be informed whether this has been done.

The wording of canon 468—"aegrotos in sua paroecia"—clearly includes all sick persons and not merely those who, by reason of domicile or quasi-domicile, arc "parishioners". This is the interpretation given by those canonists who advert to the point; Cocchi, *Commentarium,* II, §348: "Quae diximus se extendunt ad omnes aegrotos quos parochus in sua paroecia habet, etsi non sint de suo grege ratione domicilii vel quasi-domicilii". Fanfani, *De Iure Parochorum,* §342: "Obligatio ista, saltem quoad Sacramenta ministranda in periculo mortis, est gravis in parocho; et urget etiam erga eos qui parochiani stricto sensu non sunt, dummodo in territorio paroeciae habitent, neque sint exempti".

(ii) The complaint of our correspondent is reasonable, namely that it appears to be unjust that the priest, say, of a county town should have to

provide for the spiritual needs of the sick from all the parishes of the county, since their contributions towards the support of the clergy go normally to their own parish priest. But when one remembers that the grave obligation of ministering to those in danger of death, who are not parishioners, arises not from justice, but from charity towards them, the complaint can be fully admitted whilst, at the same time, sustaining the principle that, nevertheless, his obligation is clear. The priest is bound to assist any person in extreme spiritual necessity, no matter what the inconvenience or even the risk to his own life, and the fact that the sick person has no title in justice to his services is not relevant. The canon docs not clearly draw this distinction between justice and charity, but it is well known to the theologians and is often noted by the canonists: Claeys-Bouuaert, *fus Canonicum,* I, §572: "Quis fit paroecianus ratione domicilii vel quasi-domicilii; inter paroecianos recensentur *vagi* quoque pro tempore quo actualiter in tali paroecia commorantur. Erga *peregrinos* nulla iustitiae obligatione ligatur parochus; sed ex caritate debet cis rationabiliter petentibus administrare sacramenta. . .

(iii) It is our impression that the parochial clergy do not occupy their minds in the least with this distinction between justice and charity, but willingly, and as a matter of course, attend to the spiritual needs of all and sundry, particularly of the sick in hospitals within the parish; and it would, we think, be a serious criticism of the parochial system, if the obligations of the priestly office ever came to be weighed exclusively in the strict scales of justice. But there are only twenty-four hours of the day, and even a parish priest needs to eat and go to sleep now and then.

What is the remedy if the charitable work of the hospital is of such magnitude that the priest cannot attend to the just requirements of the parishioners who are supporting him? His remedy is, firstly, to put the facts before the Ordinary whose office it is, from canon 355, §1, to regulate a matter of this kind. It could be done, where possible, by withdrawing the hospital from the care of the parish priest and attaching it, for example, to
3 a convent chaplaincy; or by requiring parish priests to attend to their sick parishioners before they enter the hospital.

Secondly, if the Ordinary can do nothing to relieve the situation, the parish priest would be entitled to limit his visits to those in the hospital who are dangerously ill, leaving the others to the care of nuns or of charitable
u.B lay people. It is certain that, in such circumstances, a priest has no grave obligation in charity except towards those in extreme spiritual necessity. But it is equally certain that those who are in such necessity have the first call upon him, and other parochial duties would have to be left undone to enable proper attention to be given to the dying.

249.—Ministration to the Dying

Couldyon recommend some literature which would be useful to a priest whose work is largely concerned with administering to the dying in a hospice?

Dogmatic treatises *De Novissimis* may be read in more popular form, e.g. the volume on "Death" by the late Abbot Vonier in the *Treasury of the Faith* (B.O.W., I/.). The same writer deals with the subject in his larger books c.g. in chapters xii-xv of *The Christian Mind* (Herder, jr. *Gdi).*

The moral theologians usually put their advice to confessors attending the dying in the treatise *De Poenitentia,* explaining the method of approach in assisting different kinds of penitents. An old but well-tested book which deals more fully with the practical side of hearing confessions is *Neo-Confessarins* by Rcuter-Lehmkuhl (Herder, jr.); chapter vi, "Quomodo confessario agendum cum infirmis et moribundis", assembles the advice given by most moral theologians and presents it in a simple and logical order.

The liturgical texts in the administration of the last sacraments, and in the order of commending a soul to God, provide a precious epitome reflecting the mind of the Church and its traditions. Besides the usual works of liturgists commenting on these texts, a history of their development is briefly narrated in chapter v of Villien's *History and Litura of the Sacraments* (B.O.W., 8r. 6iZ). More popular commentaries are found in Fr. Martindale's *Last Sacraments and Prayersfor the Dying* (C.T.S., *zd.},* or in a similar pamphlet by Fr. Ronan, *The Last Sacraments* (C.T.S. of Ireland).

Closely allied to the liturgy, because of its official character, is the collection of indulgenced prayers entitled *Preces et Pia Opera* (Marietti, Turin, jr.). Chapter vi, nn. 589-604, is headed *Pro bona morte,* and contains numerous indulgenced prayers and pious exercises for the use of the dying.

Lastly, there is a large amount of pamphlet and devotional literature which may be used, for example: *A Devotional Exercise to prepare the Soulfor Death,* by Fr. Hornyhold, S.J. (B.O.W., 6J.); *A Hospital Prayer Book,* by a Priest of the *Oratory* (C.T.S., *zdf*

250.—Healing Effect of Extreme Unction

When the primary end of matrimony is impossible for the contracting parties in matrimony, the marriage is not to be impeded. On the contrary, they may get married for the secondary ends of matrimony. Why is it then that Extreme Unction cannot be given validly for its secondary end, i.e. the restoration of bodily health, when the recipient has not come to the use of reason as in infancy, or in the case of the insane who never have had nor ever will have lucid intervals ?

St. Thomas, *Comment. In Sent,* IV, q. ii, a. *z,* ad 4; Parma, VII, p. 881: Videtur quod debeat dari pueris, quia eisdem infirmitatibus quandoque laborant pueri et adulti. Sed eidem morbo debet adhiberi idem remedium . . . Praeterea, hoc sacramentum datur ad purgandum reliquias peccati, ut praedictum est, tam originalis quam actualis. Sed in pueris sunt reliquiae originalis peccati . . . Sed contra est quod nulli debet dari sacramentum cui non competit forma sacramenti. Sed forma huius sacramenti non competit pueris, qui non peccaverunt per visum et auditum, ut in forma exprimitur. . . . Ad primum ergo dicendum, quod non datur contra reliquias originalis peccati, nisi secundum quod per actualia peccata quoadammodo confortatas; unde principaliter contra actualia peccata datur, ut ex ipsa forma patet, quae non sunt in pueris. Ad secundum dicendum, quod infirmitates in pueris non sunt ex peccato actuali causatae, sicut in adultis; et contra illas praecipue infirmitates hoc sacramentum datur quae sunt ex peccato causatae, quasi peccati reliquiae.

(i) In addition to the usual authorities on the subject, e.g. Cappello,

De Sacramentis, II, §195 seq., *Revue Pratique d'Apologétique,* XIV, 1912, p. 81, contains an excellent study by Dr. Andrieux on the accepted doctrine that Extreme Unction not only may not, but cannot, be administered to those who have not reached the age of reason. Apart from Nicholas of Cusa *(pb.* 1464) and Maldonatus *(pb.* 1585) there is practically unanimity on this point amongst all the theologians from the thirteenth century onwards, and it is enshrined in the teaching of the Council of Trent[1] that this sacrament is the complement of Penance. Of the various arguments or principles adduced as reasons for the doctrine, the most satisfactory is the one St. Thomas uses, namely that the form of the sacrament necessarily excludes those who have not reached the age of reason. The form, as preserved in the tradition of the Church, demonstrates that such was the will of Christ in instituting this sacrament. The precise measure or extent of the healing virtue of the rite cannot easily be determined by any principle, but the one suggested by St. Thomas in the above text is very satisfactory.

(ii) We have not found any writer who deals explicitly with the objection raised from the primary and secondary purposes of marriage. The analysis of any action or institution into purposes or ends which are primary and secondary has its chief value in deciding upon the lawfulness, and in some cases the possibility, of having the latter without the former. It must be taken as axiomatic that the enjoyment of the secondary purpose always presupposes that the primary one is at least not positively excluded. Thus, retaining a Mass stipend is a lawful secondary purpose in offering Mass: it is retained on a just title of living by the altar which is served; but it presupposes that the sacrifice which is the primary purpose of the act is validly offered, nor may the stipend be retained by reason of the secondary purpose if it is discovered that the Mass was, for some cause or other, invalid. Similarly, in marriage, the secondary purpose may be predominant in a person's mind, but it may not lawfully be enjoyed except in relation to an action which is of its nature fitted for the generation of children. As in every human action ethically considered, we regard chiefly its immediate object, not the subsequent effects. People may marry induced thereto *(finis operantis}* by its secondary ends, but they cannot validly make the contract except by giving a consent in accordance with the terms of canon 1081, §2: "jus in corpus in ordine ad actus per se aptos ad prolis generationem".[2]

The "healing" effect of Extreme Unction may conveniently be called its secondary or subordinate end. Some modern Anglican schools of thought seem to make this the primary end, and the sacrament becomes almost indistinguishable from "faith healing", but the Catholic doctrine insists that it is primarily and essentially the complement of Penance. Whatever healing effects it may have only arise on the supposition that the subject receiving it is at least capable of committing actual sin, the relics of which it is in the power of this sacrament to remove, and amongst these relics are, as St. Thomas teaches, the bodily infirmity caused by actual sin.

[1] Scss. XTV, cap. ix.

[2] Cf. 5. O#. "De Finibus Matrimonii", i April, 1944; *A.A.S.,* XXXVI, 1944, p. 105. Rota decision, *toram* Wynen, 22 January, 1944, *A.A.S.,* XXXVI, 1944, p. 184 *stq.*

251.—Plural Extreme Unction

When administering Extreme Unction to several sick people in one hospital, is it necessary to repeat the whole rite for each person?

Rituale Romanum, Tit. v, cap. i, n. 22: Quando plurimis simul infirmis hoc sacramentum ministratur, Sacerdos singulis aegrotis crucem pie deosculandum porrigat, omnes preces quae unctiones praecedunt plurali numero semel recitet, unctiones cum respectivis formis super singulos aegrotos efficiat, omnes vero preces, quae unctiones subsequuntur, plurali numero semel dicat.

This rubric of the current *editio typica of* the Ritual was not contained in the previous editions, and is not accordingly in our *Ordo Administrandi·,* the writers previous to the appearance of the rubric sanctioned what is now in the text of the Ritual. It is in fact an application of a principle which has long been explicitly contained in other rites, such as Baptism, by which prayers accompanying actions are to be said "singulariter pro singulis" and those unaccompanied by actions said only once.

Obviously, in a case of necessity, all that is required for each person is the short form of anointing once on the forehead, as directed in cap. i, n. 21. Also the rubric in cap. ii, n. 6, allows the omission or shortening of the prayers preceding the *Misereatur,* etc., "si tempus non patiatur", which clearly refers to some reasonable necessity short of that which justifies using the briefform and one anointing.

In the case of a plural administration of Holy Communion to the sick, we have the explicit rubrics of *Rituale Romanum,* Tit. iv, cap. iv, n. 17, for sick people "in eodem cubiculo vel loco". In explaining these words the writers used to require a moral unity, which extended to cases where the priest could be heard or seen, even though the sick people were in different rooms, and with the advent of frequent Communion a liberal interpretation of this moral unity was quite common in practice. This is now no longer necessary, since the *Congregation of Rites* issued on 9 January, 1929, explicit directions concerning the procedure of administering Holy Communion to persons lying in different rooms of the same building; these directions are not yet incorporated in the text of the Ritual. Cf. Q. 157.

Previously to this instruction, many writers dealt, at one and the same time, with plural Extreme Unction and plural Holy Communion, applying the same principle to both. It may be asked whether it is not now permitted to interpret the rite for plural Extreme Unction according to the new rules regulating plural Holy Communion, that is to say, whether it is lawful to use the plural form of anointing when sick people arc lying in different parts of the same hospital. We cannot find this point discussed by any recent writer. In our view it is not permitted, since the rubric of cap i, n. 22, presupposes that the sick people arc together in one room, or arc, at least, morally united as already explained. What is permitted is the omission of the preceding prayers, as directed in cap. ii, n. 6, whenever time is pressing, and this rubric could often rightly be followed if there are many sick people to be anointed in various wards. No doubt, in course *of* time, the rules for plural anointing may be brought into line with those for plural Holy Communion, but we may not anticipate a ruling; the new rule was called for owing to the

number and frequency of Holy Communions, and it may not be applied arbitrarily to another Sacrament which is administered far less frequently.

252.—Subject of Extreme Unction

Having baptised absolutely a dying person, it appeared doubtful whether he could validly receive Extreme Unction immediately after Baptism, since he could not actually have committed any sins, and, in that respect, would be equivalent to a newly baptised infant. I anointed him conditionally and wondered afterwards whether the right coarse would have been to return and administer the sacrament after a day or two l

The reason for the doubt in the priest's mind is summed up in the form of the Sacrament: *Indulgeat tibi Domunus quidquid . . . deliquisti.* There is no strict comparison between such a person and a newly baptized infant, since the latter is not even capable of actual sin, whereas the former is.

It is the common doctrine that capability to commit sin is all that is required, and this applies even to young children. The decree *Quam Singulari,* 10 August, 1910, ad viii, noted, amongst other abuses, the custom of not anointing children who had reached the age of discretion. The form must be understood, as it were, in this potential or conditional sense, as, indeed, is indicated in the text of St. James: "and *if he.* be in sin". The sacrament in the above case was validly administered, of course, but the condition was unnecessary. From canon 941 the contingencies in which it may be administered conditionally are: "Quando dubitatur num infirmus usum rationis attigerit, num in periculo mortis rcipsa versetur vel num mortuus sit."

Accordingly, a reply of *Propaganda,* 26 September, 1821, directed that an adult pagan who is baptized when dying should also be anointed, and a reference is made to a decree of the *Holy Office,* 10 May, 1703, ad viiil which stressed the necessity of some intention in such cases: "saltern idem habeat aliquam intentionem recipiendi Sacram Unctionem in beneficium animae, pro mortis tempore, ordinatam". There could be added, we think, to the instances mentioned in canon 941, when the Sacrament is to be conferred conditionally, the case in which the minister is in doubt concerning the subject's intention, e.g. the dying person may be uninstructed and unconscious.

253.—Anointing Air Raid Victims

Slay the modem teaching which permits the conditional anointing of persons whose death is only "apparent" (since life is probably not extinct} be applied to those killed in air raids, no matter what the extent of their injuries may be, even decapitation?

The principle covering the conditional administration of the sacraments is that it may be done whenever they will be exposed to the danger of nullity if administered absolutely and, at the same time, a person will suffer grave injury if refused. The doctrine is now well established in the manuals that

* *Fontes,* nn. 4728 and 765.

this principle may be applied to those in whom life is not certainly extinct, even though they may be "dead" in the sense that, short of a miracle, they can never come to apparent life again. The best manualist treatment of the subject is Ferrcres, *Tbeol. Moralis,* II, §856, which summarizes the author's classical book *La Morte Reale et la Morte Apparente.*

Dr. Michel, in the course of his article "Mort" in *Dictionnaire de Théologie Catholique,* X, col. 2495, writes: "Dans ces cas de morts violentes . . . on doit admettre le fait d'une mort relative, même après la cessation des battements du cœur. Et cette persistance latente de la vie existe, semble-t-il, dans le plupart sinon dans la totalité des cas de mort violente." Among these instances of violent death he includes decapitation, the example mentioned above in querying the application of the modern teaching to such a case. Fr. Dunne, on the other hand, in his valuable commentary, takes an opposite view: "In a few cases—e.g. of decapitation, or of a person who has been entirely crushed to death—there is little doubt that real death is immediate, but in all other cases we may conclude that life is probably present for some time after, and consequently that Extreme Unction may be administered."[1]

It must be remembered, of course, that the modern teaching with regard to administering the sacraments in such contingencies does not claim to be certain or anything like certain; the efficacy of their administration is extremely dubious for a variety of reasons. Nor can it be said, with any certainty, that a priest is bound to follow this modern teaching; the *Rituale Romanum* and our *Ordo Administrandi* take no account of it whatever, and it is evident that the existing rubrics of these books are, if anything, against the practice. We know of only one local ritual (Cambrai, 1927) approved by the Holy See which has included it: "Hic animadvertere oportet mortem veram cum specie mortis non necessario congruere, ac proinde extremam unctionem quibusdam esse ministrandam qui spiritum iam emisisse videntur."

We are of the opinion that if a sacrament can be administered with some probability of benefiting the recipient, a priest is bound to administer it.

We think, moreover, that there is no good reason for excluding cases of decapitation from the application of the modern teaching; that is to say, whatever value this teaching possesses, there seems to be no radical difference between a person who has died from a broken neck and one whose head has been severed from the body. If life is held tc be latent in the former case, why not in the latter also ? Accordingly, wc see no valid objection to applying the modern teaching to air raid victims, no matter what their injuries may have been. There is no agreement as to the length of time within which the sacraments may be administered—in the case of sudden death many permit two or three hours.

254.—Religious and Last Sacraments

Whose duty is it to administer the last sacraments to a religious ? There appears to be some uncertainty whether it is the parish priest, the chaplain to tbe nuns, or tbe ordinary confessor.

[1] *Tbt Ritual Explained,* p. 80.

Canon 514, §1 : In omni religione clericali ius et officium Superioribus est.

§2. In monialium domo idem ius et officium habet ordinarius confcssarius vel qui eius vices gerit.

§3. In alia religione laicali hoc ius et officium spectat ad parochum loci vel ad cappellanum quem Ordinarius parocho suffecerit ad normam can. 464, §2.

Canon 464, §2: Potest episcopus iusta et gravi de causa religiosas familias et pias domos, quae in paroeciae territorio sint et a iure non exemptae, a parochi cura subducere.

There is happily in this question no uncertainty whatever about the law, and whatever doubts arise are due to the lack of English equivalents for the Latin words describing various categories of religious. These are accurately given in canon 488.

If the nun in question is "monialis", i.e. a member of an Order which from its constitutions has solemn vows, as have Carmelites or Benedictines, the last sacraments are to be administered by the ordinary confessor.

All religious women who are not "moniales" are "sorores", i.e. members of a Congregation having simple vows; both "moniales" and "sorores" belong to religious Institutes which are styled "religio laicalis", as distinguished from "religio clericalis" whose members include priests. Hence canon 514, §3, includes religious Institutes of women whose members are "sorores", and to this category belong the majority of religious women. In their case the parish priest should administer the last sacraments, unless the Ordinary has withdrawn them from his pastoral care and appointed a chaplain instead. If it is not clear whether they have been so withdrawn, the Ordinary is the only person who can solve the doubt. Usually it may be said that, if the religious are served by a curate (vicarius co-operator) attached to the parish church, the religious are not withdrawn from the pastoral care of the parish priest; if, on the other hand, the religious have their own chaplain living on the premises, it is quite likely that he has been appointed according to the terms of canon 464, §2, in which case he should administer the last sacraments.

It must be observed that the last sacraments are Extreme Unction and Viaticum. In going to confession before receiving them, all religious, no matter what their legal status may be, have the fullest liberty of choice from canons 882; 892, §2; 522 and 525.

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255.—The Last Blessing

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According to the manualists, it would seem that Extreme Unction may be repeated during the same illness provided the person has been convalescent and again bad a relapse, whereas the last blessing may be given only once during the same illness. On the other hand, Canon Dunford, in his book, "Suggestions for the Newly Ordained" (J). 66), *seems to suggest that the last blessing may be given as often as the anointings are repeated. His words are·. "There is no need to give the last blessing, sinlessyou have to anoint again."*

S.C. Indnlg., 20 June, 1856, ad 7: Licetnc, aut saltern convenitnc iterum applicare indulgentiam in articulo mortis, (i) quando aegrotus accepit applicationem in statu peccati mortalis ? (ii) quando post applicationem in

peccatum relapsus est? (iii) quando post applicationem diuturna laborat aegritudine, uno verbo, quando Rituale permittit aut praecipit iterationem Extremae Unctionis, aut confessarius iudicat iterandam esse absolutionem? *Resp.* ad (i) and (ii) Negative; ad (iii) prout iacet, Negative pariter in omnibus.[1]

24 September, 1838, ad 2: Utrum Benedictio Apostolica pluries impetiri possit infirmis, novo mortis periculo redeunte? *Resp.* Negative, eadem permanente infirmitate etsi diuturna; Affirmative, si infirmus convaluerit, ac deinde quacunque de causa in novum mortis periculum redeat[2]

The formation of some rule about repeating Extreme Unction is a well-known practical difficulty. The principle is in canon 940, §2: "In eadem infirmitate hoc sacramentum iterari non potest, nisi infirmus post susceptam unctionem covaluerit et in aliud vitae discrimen inciderit." Canon 468 contains no similar rule with regard to the Apostolic blessing, but it should be noted that the same word "convaluerit" is used both in canon 940 (Extreme Unction repetition) and in the reply of 24 September, 1838 (Apostolic blessing repetition). It is, therefore, easy to perceive that Fr. Dunford formulated a simple and general practical rule, namely that the blessing should be given whenever the sacrament is given, and repeated when the sacrament is repeated.

But it cannot be said that the two sets of conditions are necessarily and always coincident. They coincide in the case where the sick person has recovered and fallen again into danger. But other situations which justify repeating Extreme Unction are dealt with by the manualists, in addition to the "convaluerit" of canon 940, e.g. the time element in a prolonged illness, which may often be considered as indicating, morally speaking, that a fresh danger has intervened. Extreme Unction is then repeated, since a new danger justifies repetition and the sick person should not be deprived of that sacramental grace. But a sick person is not deprived of anything by non-repetition of the Apostolic blessing, since the indulgence is not gained until the actual moment of death. The manualists, therefore, usually differentiate between the two things, and teach, with greater accuracy than Fr. Dunford, that we cannot always act on the principle that the Apostolic blessing is to be repeated whenever Extreme Unction is repeated. Like every other indulgence the conditions attaching to it are largely a matter of positive law, and the Church has directed that it is not to be repeated except in the case where the sick person has recovered and fallen again into danger of death.

[1] *Fontes,* n. 5005.
[2] *Ibid.,* n. 1008.

IX. HOLY ORDERS

256.—The Minister of Holy Orders

What explanations are offered concerning the bull of Boniface IX which granted to an abbot the power of ordaining priests within the monastery?

The theoretical aspect of the question was discussed by mediaeval canonists and theologians, and it is intimately connected with the controversy amongst biblical scholars concerning the hierarchy of the early Church. The weight of argument and authority, in this discussion, has always been heavily on the side of the theological view which requires episcopal consecration for the valid conferring of the diaconatc and priesthood, a view which is strongly supported by can. 7, Sess. XXII of the Council of Trent: "Si quis dixerit, episcopos non esse presbyteris superiores, vel non habere potestatem confirmandi et ordinandi; vel eam quam habent illis esse cum presbyteris communem. . . . A.S."[1] It is admitted, of course, by all that the minor orders and the subdiaconate can be validly conferred by a priest, provided he is delegated by the Holy See.[2] With regard to the diaconatc, there exists a bull of Innocent VIII, 9 April, 1489, conferring on the Cistercian General and his successors the power to ordain deacons, and some other examples of this faculty are quoted.[3] Doubts exist whether this bull of Innocent VIII is authentic and an excellent summary of the controversy may be seen in *l'Ami du Clergé,* 1928, p. 370.

In 1911 the text of a bull of Boniface IX, discovered in the Vatican Archives[4], was published in the *English Historical Review,* XXVI, p. 125. This bull is certainly authentic and renders the bull of Innocent VHI of secondary importance, for Boniface IX granted the faculty of ordaining priests to the abbot of the Augustinian Canons of St. Osithe in the diocese of London.[5] The text of this bull, 1 February, 1400, has been reprinted in various periodicals.[8]

The essential portion is as follows: "Hinc est quod nos ipsorum Abbatis et Conventus in hac parte supplicationibus inclinati ut idem abbas et successores sui in perpetuum abbates eiusdem monasterii pro tempore existentes omnibus et singulis Canonicis praesentibus et futuris professis eiusdem monasterii omnes minores nccnon subdiaconatus diaconatus et presbyteratus ordines statutis a iure temporibus conferre libere et licite valeant et quod Canonici sic per dictos abbates promoti in sic susceptis ordinibus licite et libere ministrare possint, quibuscunque contrariis . . . nequaquam obstantibus, eisdem Abbati et successoribus suis ac eorum Canonicis auctoritate apostolica tenore praesentium indulgcmus." Three years later,

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[1] Denz. 967.

[2] Gasparri, *De Sacra Ordinatione,* §781.

[3] Cf. Tixeront, *l'Ordre,* p. 192.

[4] Rcg. Lat., 81, fol. 26;.

[4] Butler gives a notice of St. Osithe Virgin and Martyr under 7 October. She was beheaded about the year 870 and her relics were brought to Cnich or Chtck, in Essex, near Colchester, where an Abbey of Regular Canons was built under her invocation

[8] E.g. *Periodica,* 1924, 18; *l'Ami du Clergé,* 1926, p. 469.

6 February, 1403, Boniface IX recalled this bull at the instance of the Bishop of London, who rightly claimed that his jurisdiction was thereby damaged: "Litteras et indulta huiusmodi auctoritate apostolica ex certa scientia tenore presentium cassamus et irritamus ac nullius esse valoris vel momenti."

There is clearly abundant material in this bull and its retractation to exercise the minds of canonists and theologians for a long time. Some think that the concession supports the theory that a priest, by virtue of his priestly ordination, possesses the radical capacity to ordain other priests. To do so validly he needs papal delegation. One could, I suppose, cite, in support of this view, the fact that priests impose hands at every ordination, but the weight of theological authority is against such a solution.

We may adopt, with regard to the present bull, the judgement of Pesch on the bull of Innocent VIII: "Genuinitatc concessionis supposita, estne quaestio dogmatica, de qua hic agitur, soluta? Non videtur; nam unum factum pontificium non facit legem neque dogma. Potuit pontifex opinionem sequi, quae a multis doctoribus defendebatur, non eo ipso definiens hanc opinionem. Cum enim in tota historia ecclesiastica nullum aliud simile exemplum occurrat, videtur ecclesia sentire se non posse talem facultatem concedere; nam si qua in re pontifices censebant se habere potestatem concedendi similia privilegia, saepissime ea usi sunt et utuntur."[1]

Is there any method of explanation which will leave intact the common theological doctrine, and at the same time prevent one from saying that Boniface IX exceeded his powers? For, although the infallibility of the Pope is not implicated, it is better, if possible, to avoid the conclusion that the Pope erred in exercising, in so solemn a manner, his jurisdiction. One way is to suppose that the abbot in question possessed episcopal consecration, a pure hypothesis which is not supported by the text of the bull, which grants the same power to his successors. Another solution, and one which commends itself as the best, is to see in the concession a complete and total exemption from the jurisdiction of the local Ordinary, in the sense that the abbot could secure the ordination of his subjects by any bishop whatever, without reference to the Bishop of London and without seeking his permission.[2] This solution is, perhaps, supported by the fact that the bishop, in protesting to the Pope, did so on the score of damage to his own jurisdiction.

Whatever the solution, the question is extremely important and interesting, and no completely satisfactory explanation exists. It has been pointed out that canon 951 leaves the question more or less open: "Sacrae Ordinationis minister ordinarius est Episcopus consecratus; extraordinarius, qui, licet charactere episcopali careat, a iure vel a Sede Apostolica per peculiare indultum potestatem acceperit aliquos ordines conferendi."[3]

A good manualist survey of the questions raised bp both bulls may be seen in Cappello, *De Sacra Ordinatione*, §§301-512.

257.—Ordination Days

May we in this country regard the feasts of the Immaculate Conception and St. Joseph as lawful occasions for ordination, seeing that they are not days of obligation with us?

[1] *De Sacramento Ordinis,* Prop. LII, §668; Cf. also Gasparri, *op. cit.,* §798.

[2] Cancc: Lr *Code de Droit Canonique,* II, p. 373, quoting de la Bcllacasa, S.J., and Hugon, O.P.; *Diet. Thiol.,* XI, col. 1386.

[3] Cf. *Jus Pontificium,* 1929, p. 162.

Canon 1006, §2: Ordinationes in sacris celebrentur intra Missarum solemnia sabbatis Quatuor Temporum, sabbato ante Dominicam Passionis, et Sabbato Sancto.

§3. Gravi tamen causa interveniente, Episcopus potest eas habere etiam quolibet die dominico aut festo de praecepto.

Code Commission, 15 May, 1956: An sub verbis *festo de praecepto,* de quibus in canone 1006, §5, veniant etiam festa per Codicem in universa Ecclesia suppressa ? *Resp.* Negative.

(i) Actually the Code did not suppress any Holy Days of obligation. On the contrary, in canon 1247, §1, two were restored which were not in the previous list of Pius X's *Motu Proprio,* 2 July, 1911, namely Corpus Christi and the Immaculate Conception. The suppressed feasts, often known as days of devotion, on which the obligation of saying *Missa pro populo* still exists, are those contained in the list issued by *S.C.Conc.,* 28 December, 1919, *A.A.S.,* XII, 1920, p. 42.

(ii) Before the *Code Commission* gave its decision, 15 May , 1936, it was held by many canonists that "festum de praecepto" in canon 1006, §2, included the suppressed feasts, because in many other connexions the term "festum de praecepto" was taken to include those which had been suppressed, and it was observed that even episcopal consecration could take place, from canon 1006, §1, on feasts of the Apostles, many of which had been suppressed. Moreover, no distinction is made in canons 339, §1, and 466, §1, between days of obligation and suppressed feasts, in so far as *Missa pro populo* must be said on all these days; the Church desired to preserve the solemnity of these suppressed feasts, the obligation of hearing Mass excepted, and the holding of an ordination was in harmony with this desire.

These reasons notwithstanding, the Code Commission in 1936 decided in the opposite sense, the principle being—if these matters are subject to a principle—that the term "festum de praecepto" for ordination purposes means a feast which is of obligation in the universal Church. Accordingly, the directions of J.R.C., n. 2682.1 and 2852, permitting ordination on suppressed feasts, are now obsolete. On the other hand, in places where the external solemnity is transferred to the following Sunday, ordinations may take place on the feast day itself as decided by 5.R.C., n. 3890, I, 1.

(iii) We have, lastly, the situation where, as in England, certain of the feasts enumerated in canon 1247, §1, are not of obligation: they are the Immaculate Conception and St. Joseph. Applying the same principle on which the decision of 1936 is apparently based, it seems to us certain that ordinations are permitted on these two days because they are feasts of obligation in the universal church. As is evident, the only authorities of any value are those who have written after 1936, and the only one we can cite in support of this solution is the eminent canonist Roberti in *Apollinaris,* 1936, p. 592: "Sequitur ex eodem principio generali: si quod ex vigentibus festis alicubi sit dispensatum, eodem die festo licet nihilominus ordines sacros conferre, quia etsi in peculiari loco dispensatus sit, nihilominus dies festus manet pro universa Ecclesia."

258.—Ordination Preface

What is the exact meaning to be given to the phrases "secundis praedicationibus" and "secundi meriti munus" in the preface recited during the rite of ordaining priests ?

The phrases are obscure and, perhaps, in need of emendation, but the meaning is clear from the whole context of the preface: God chose lévites to assist the high priest, and seventy wise men to assist Moses in the wilderness, and companions to assist the Apostles; the ordaining bishop, protesting that he has more need than these men of old, asks God for similar assistance, and prays—amongst other things—for those about to be ordained priests: "ut acceptum a te, Deus, secundi meriti munus obtineant".

The meaning of "secundum" is here "subordinate" or "lesser", as earlier on in the preface "secundae dignitatis" is used of the assistants of the high priests, and "secundis praedicationibus" for the ministry of those who assisted the Apostles. Classical examples of this meaning of "secundus" are given by Lewis and Short under A.z.b.

"Meritum" has here the less usual meaning of "rank" or "dignity", to which the classical examples in Lewis and Short under 3.B. approximate. We are familiar with this use of the word in the Secret prayer of the *Missa Quotidiana* for the dead: "ut, quibus in hoc saeculo pontificale seu sacerdotale donasti meritum", and other examples from the fourth and fifth century are given by Dom Bottein, *Questions Liturgiques et Paroissiales,* 1956, p. 86. The same scholar considers that "praedicationibus" is a corrupt reading for "praedicatoribus" as found in the Leonine, Gelasian and Gregorian Sacramentaries. He also suggests that this insistence on the subordinate character of the priesthood was by way of protest against the views of St. Jerome and others, who regarded a bishop as merely "primus inter pares".

This meaning of "secundi meriti" is rather missed in the C.T.S. translation, *The Ordination of a Priest:* "that they may keep the rank in thy service which they have received from Thee"; it is rightly expressed in *The Conferring of Orders* published by the Art and Book Co.: "that they may hold from Thee, O God, the second rank in thy service". Both translations miss the force of "secundis praedicationibus": "by which their words were spread throughout the whole world" (C.T.S.), "by means of whom they filled the whole world with their preaching" (A. & B. Co.),

259.—Application for Holy Orders

Is it necessary for a candidate desiring Holy Orders to make the application and declaration in his own handwriting? Or does it suffice to type it or merely to sign a printed formula?

S.C. Sacram., 27 December, 1950, §2.1: scriptam ipsi exhibeant . . . sua manu exaratam et subscriptam . . . §3.1. Hic scribere debebit sua manu declarationem . . .

S.C. Relig., i December, 1931, II, 17: manu propria candidati subscriptam . . .

These two documents contain instructions from the Sacred Congregations on the preliminary scrutiny before admitting candidates to Orders. Amongst other things, each candidate is required to make a personal written application declaring that he is fully aware of all the obligations to be assumed and particularly that of celibacy.

The practice in some places is to provide the candidates with a printed formula which is returned duly signed, and it would appear that the substance of the law is thus observed; for in other matters of similar importance,

for example, the mixed marriage guarantees, which from canon 1061, §2, must be in writing, the use of printed forms is taken as a matter of course.

But it will be noticed that, in the above texts, the instructions determine the mode in which the application and declaration are to be made: they must be written in the candidate's own handwriting. The point is made quite certain in the text of the formula given in n. 17 of the second document, which concludes "N.N. manu propria": there is no meaning in requiring a man's signature to be "manu propria", for it cannot be anything else; therefore the phrase must be taken as referring to the whole document. The purpose of the law is to ensure complete knowledge and freedom in the candidate, and to provide documentary proof of the same. This is more effectively obtained if he writes out the document himself. For the same reason, in our view, the candidate docs not properly comply with the law by using a typewriter, for there can be no assurance that it was typed by the person who signed it.

We have not seen this point argued by any of the commentators on the above instructions, but they all assume that the document will be in the handwriting of the candidate applying. *Periodica,* 1931, p. 256: "autographae autem declarationes a singulis scribi et tradi debebunt". *Apollinaris, 1*931, p. 210: "declaratio propria ipsius manu subscripta . . . propria manu scriptam ac subscriptam". Cf. also Cappello, *De Sacra Ordinatione,* §397.

260.—Theology Before Ordination

Is permission often given for ordination before the completion of four years' study of theology?

Canon 876, §2: Firmo praescripto can. 975, subdiaconatus, ne conferatur, nisi exeunte tertio cursus theologici anno: diaconatus, nisi incepto quarto anno: presbyteratus, nisi post medietatem eiusdem quarti anni.

This law, like any positive law, may be dispensed for proportionate reasons, e.g. the advanced age of the candidate, but it is not, we believe, often granted in the case of secular clerics. It is not uncommon for religious orders to obtain a general permission to present all their subjects for ordination, under certain conditions, before the canonical time. An example of a papal induit conceding this favour is printed in *Theologisch-praktische Quartalsebrift,* 1934, p. 835. It is granted to the Abbot General of the Cistercians: "Ex Audientia SSmi diei 13. Novembris 1933, Ssmus D.N. Pius PP.XI infrascripto Cardinali Praefecto S. Cong. neg. Relig. praepositae, attentis expositis, benigne annuit pro gratia juxta preces, ut alumni ad Presbyteratus ordinem non promoveantur nisi expleto tertio anno cursus Theologici, atque S. Theologiae sedulo operam dare pergant, saltem usquedum praescriptum quadriennium rite compleatur, vetito interim quocumque animarum ministerio, id est ne destinetur concionibus habendis aut audiendis confessionibus aut exterioribus religionis muniis, super quibus Superiorum conscientia graviter onerata remaneat, servatisque de iure servandis. Contrariis quibuscunque, etc. C. Card. Laurenti."

261.—Ex-Religious in Minor Orders

A religions in an exempt clerical Institute received the tonsure and minor orders whilst under temporary vows. The time of these vows being expired, the superiors

would not pennit him to renew them or to make his perpetual profession. Since be desires to proceed to the priesthood, what rights has he got against the Institute which dismissed him ? If he has none, what is his position as a cleric ?

The situation with regard to a dismissed religious is clearly provided for in canon law. Λ refusal to permit vows to be renewed at their expiration is spoken of above as "dismissal", which is incorrect. Dismissal is lawful, in the case of a religious under temporary vows not yet expired, when the procedure (grave reasons and the rest) of canon 647 has been duly observed. From §2.4 of this canon the religious has the right of recourse to the Holy See, and pending a decision the dismissal is of no effect. If his recourse is unsuccessful, the dismissal takes effect and he is reduced to the lay state from canon 648: "ipso facto solvitur ab omnibus votis religiosis . . . clericus autem in minoribus ordinibus constitutus eo ipso redactus est in statum laicalem".

But there is a difference between leaving a religious Institute on the expiration of vows and being dismissed from it. In the latter case a grave cause is required, in the former merely just and reasonable causes (canon 637); in the latter case a cleric in minor orders is *ipsofacto* reduced to the lay state, in the former case this is not expressly contained in the law; in the latter case canon 647, §2.4, provides for recourse "in suspensivo" to the Holy See, in the former there is no such provision.

Has then a religious no remedy if he considers that he has been prevented unjustly and unreasonably from renewing his vows ? Certainly, he has the right which every member of the Church possesses of appealing to the Holy Sec to remedy an alleged injustice. But seeing that the law gives the religious superiors the widest discretion in refusing a renewal of vows, we are of the opinion that the chance of any appeal succeeding is slight, except in the case mentioned in canon 657, namely when renewal of vows is refused owing to ill-health which was not concealed before the emission of temporary vows. If the appeal is successful the religious would be reinstated in the Institute, but pending a decision he must leave it; unlike the appeal of a dismissed religious, under canon 647, §2, an appeal against the decision taken by superiors in canon 637 is not "in suspensivo" but "in devolutivo".

A religious in major orders who, for any reason, is lawfully severed from his Institute, is governed by canons 641, 642, 648, but the status of one in minor orders is not clearly defined by the Code. It cannot be said with certainty that he is reduced *ipso facto* to the lay state, unless he has been dismissed from the Institute; and if he is still a cleric, it appears that he must belong to some Ordinary, from canon 111.

One view is that he comes under the jurisdiction of the Ordinary of his domicile or quasi-domicile, not indeed with that dependence which arises from incardination, but on a par with the rest of the faithful, from canon 94. This Ordinary has the power to reduce him to the lay state from canon 211, §2.x

Another view is that he becomes incardinated to the diocese to which he belonged before entering the religious Institute, and the Ordinary may reduce him to the lay state, or receive him amongst his own clerics, or excardinatc him to another diocese.3

Neither of these views seems correct, since it is not equitable that an

du Cltrgi, 195S P· 5°9·

1 Cf. Bcstc, *In/rodwtio in Codictm,* p. 172.

Ordinary should be burdened with the responsibility of disposing of a cleric, for whose entry into the clerical state he was in no way responsible. Moreover, under canon 94, the ex-religious would have the choice of more than one Ordinary, whereas the diocese of incardination, from canon 111, §2, is that diocese for the service of which a cleric becomes ascribed by receiving the tonsure, a description which by no means fits the above case. Our opinion is that this cleric is reduced to the lay state on leaving his Institute, just as though he had been dismissed.1

If this ex-religious is unwilling to regard himself as reduced to the lay state, he must find an Ordinary willing to receive him and promote him to major orders, observing *mutatis mutandis* the terms of canon 212, §1. There is not, strictly speaking, any injustice in his position, since no one has any right to ordination, and not being in major orders he has no claim on any Ordinary for the means of subsistence.

262.—Sacerdotal Anniversary

Is there any special Mass which may properly be said on the anniversary of a priest's ordination 1

If the day is one on which a votive Mass may be said, a priest may choose any votive Mass he pleases, according to *Rubricae Generales, IV,* 3. The only limit to the phrase "pro arbitrio Sacerdotum" is the concluding monition: "id vero passim non fiat, nisi rationabili de causa".

When the typical edition (1920) of the Missal was being prepared, the Commission considered a rubric to be included, conceding to the sacerdotal anniversary liturgical privileges similar to that of bishops. But the suggestion was not accepted, and all that we have is the permission to add the prayer, *pro seipso sacerdote,* which is n. 20 among *Orationes Diversae,* on days permitted by the rubric in *Addit, et Variat.,* VI, 3.

263.—Newly Ordained Priest

Could you supply the details of indulgences at present obtainable which are connected with tbefirst Mass and blessing ofa newly ordainedpriest?

(i) *Seven years'* indulgence to all the faithful devoutly assisting at a priest's first Mass. *A plenary indulgence* to his relatives (consanguinei) to the third degree inclusive, provided they go to confession and Communion and pray for the Holy Father's intention (16 January, 1886; 18 March, 1932), n. 629 (a).

(ii) *One hundred days* to all who kiss the hands of a newly ordained priest either on the ordination day or on that of his first Mass (29 April, 1934), n. 629 (b). As far as we know, there is no indulgence attached to the blessing given by a newly ordained priest.

(iii) *A plenary indulgence* to the priest himself on the occasion of saying his first Mass, provided he goes to confession and prays for the intention of the Holy Father (16 January, 1886), n. 684.

The numerical references above refer to *Preces et Pia Opera,* Vatican Press, 1958, which must now be taken as the only authentic list of indulgenced prayers and good works for the whole Church.

1 Palombo, *De Demirrione V^ligiosortm,* §214.

X HOLY MATRIMONY

§1. MARRIAGE PRELIMINARIES

264.—Form of Betrothal

A couple who have become engaged want to solemnise the occasion. Is there any specialform which must be used?

Canon 1017, §1: Matrimonii promissio sive unilateralis, sive bilateralis seu sponsalitia, irrita est pro utroque foro, nisi facta fuerit per scripturam subsignatam a partibus et vel a parocho aut loci Ordinario, vel a duobus saltem testibus.

No special form of the document is prescribed by the common law, though some dioceses may have an authorized form. *Ne Temere* required the document to be dated, but the Code does not do so expressly; nevertheless, it should be dated like any other document. Suggested forms are given in the books. We give one in English taken from Cronin, *New Marriage Legislation* (1908), p. 18:

We, the undersigned, possessing sufficient knowledge of the obligations to be assumed, do hereby, freely and unsolicited, mutually promise to enter into Holy Matrimony before the.....day of.....19....

James M. Smith of.....
Mary R. King of.....

JP7Aw£t: W. J. Stanton, parish priest of.....

265.—Breach of Promise

Forjust and conscientious reasons Titius refuses to keep his promise of marriage to Berthay and is contemplating marriage with someone else. Bertha considers herself entitled to damages. As the parties are good Catholics, the question arises whether, in the event of them failing to reach an amicable settlement, an action for damages in a civil court is permitted by canon law.

It must first be observed that, from canon 1017, a promise of marriage is not reckoned to exist in the eyes of the Church unless it was canonically effected in writing, signed by the parties and by the parish priest or local Ordinary, or by two witnesses. If this was not done, it is an informal engagement, of which the Church takes no cognizance.

If the promise of marriage was validly effected according to canon 1017, a diriment impediment of public honesty used to exist before the Code, between each party and the blood relations of the other to the first degree in the direct and collateral line. This was abolished by the Code and the law now recognizes no action arising from breach of promise, except an action for damages; canon 1017, §3: "At ex matrimonii promissione, licet

valida sit nec ulla iusta causa ab eadem implenda excuset, non datur actio ad petendam matrimonii celebrationem; datur tamen ad reparationem damnorum, si qua debeatur." A reply of the *Code Commission,* 5 June, 1918, decided that this action for damages was of mixed forum, that is to say, it pertained to the competence of both civil and ecclesiastical courts; to the ecclesiastical because of its connexion with the sacrament of marriage, to the civil because of the temporal loss. The rule concerning such "mixed forum" cases is in canon 1553, §2: ć‹^n causis in quibus tum Ecclesia tum civilis potestas aeque competentes sunt, quaeque dicuntur mixti fori, est locus praeventioni." *Praeventio* means that whichever court first accepts the complaint has the right to judge the case. It is rather unlikely, in this country, that an ecclesiastical court would care to deal with such matters.

266.—Previous Investigation: Whose Duty?

It is understood that more than one parish priest may be competent validly and lawfully to assist at marriages. But which of these priests has not only the right but the obligation to make all the preliminary investigations? For example, in the event of a bride in parish "A" electing to get married in parish "B", which is that of the bridegroom, may the parish priest of "A" insist on all the preliminary investigations being made by the parish priest of "B"? In other words, may it be said that, in principle, the ultimate responsibility rests with the parish priest of the place where the marriage is contracted?

Canon 1020, §1 : Parochus cui ius est assistendi matrimonio, opportuno antea tempore, diligenter investiget num matrimonio contrahendo aliquid obstet.

§5. Ordinarii loci est peculiares normas pro huiusmodi parochi investigatione dare.

Canon 1029: Si alius parochus investigationes aut publicationes peregerit, de harum exitu statim per authenticum documentum certiorem reddat parochum qui matrimonio assistere debet.

Middlesbrough Decrees, 1953, η. 147, and *Lancaster Statuta,* 1935, η. 113: The duty of inquiring into the *status liber* belongs, as a rule, to the parish priest of the bride; but when the marriage takes place in another parish, the responsibility of investigating rests with the parish priest who assists at the marriage—ad normam can. 1020.

(i) It is true that, in the common law, the ultimate responsibility rests with the priest who assists at the marriage, for he is required from canon 1097, §1.1, to assure himself that the parties are free to marry. But, unless local law determines otherwise, he will naturally prefer the previous investigation to be in the hands of the parish priest of the bride, to whom it normally belongs, and will be very content to accept an assurance from this priest that everything is in order. The commentators agree that, if the bride has a plurality of proper parish priests, she may choose whom she pleases to conduct the investigation, and it is evident on general principles that this priest may not refuse to investigate the proposed marriage of his subject, even though the marriage is being contracted elsewhere, unless local law has relieved him of this obligation.

(ii) Canon 1020, §3, assumes that a local law exists, and we personally

have no doubt that the regulation made for Middlesbrough, Lancaster and other places could very suitably be made the rule everywhere in this country. For when several persons have a legal obligation which can be performed by any one of them, it often happens, in human affairs, that none does it. It is possible for both parties to have more than one proper parish priest for the purpose of marriage, from canon 1097, §1.2; and even the rule of §2 of the same canon, which gives the preference to the parish priest of the bride—a rule which is of very slight force[1]—does not exclude a plurality of parish priests of the bride. In addition to parish priests, other than that of the bride, who may lawfully assist at her marriage in their own right from the common law, there are those who may be authorized to do so by obtaining the necessary permission, as provided for in canon 1097, §1.3. Whatever emoluments are customary will go to the priest who assists at the marriage, unless forfeited by a flagrant violation of the law,[3] and it is in accordance with natural justice that the work of previous investigation shall be done by this priest. The labour involved may be considerable, and the tendency of the law is to increase it, as may be seen from examining *S.C. Sacram.,* 29 June, 1941; in addition, nearly everywhere in this country, the work includes giving special instructions to the non-Catholic party of a mixed marriage.

(iii) We read in 5.C. *Sacram.,* 2.9 June, 1941, n.4 *(a),* a recommendation that the parish priest of the bridegroom shall conduct a separate examination of the man: "Quod ad parochum attinet: qui habet ius et onus inquirendi, is est cui competit assistentia matrimonii, et hic, nisi iusta causa excuset, est parochus sponsae (can. 1097, §2). Vcrumtamcn, etiam parochus sponsi, vel proprio marte vel instante sponso ipso vel sponsae parocho, examen peragat ad libertatem sponsi in tuto ponendam, et peractae huius inquisitionis documentum ad sponsae parochum quam primum mittat, una cum ceteris documentis necessariis (testimonio baptismi, etc.) in suo paroeciali archivo forte exstantibus." This is already the custom or the local law in some places.[3]

267.—Freedom to Marry: Meaning

What is meant by "status liber" in relation to the preliminary investigation of marriages? Docs the law require the formality of a certificate or document declaring the freedom of the parties before marriage may lawfully be contracted?

Canon 1019, Antequam matrimonium celebretur, constare debet nihil eius validae ac licitae celebrationi obsistere.

Canon 1020, §1: Parochus loci cui ius est assistendi matrimonio, opportuno antea tempore diligenter investiget num matrimonio contrahendo aliquid obstet.

Canon 1097, §1.1: Parochus autem vel loci Ordinarius matrimonio licite assistunt, constito sibi legitime de libero statu contrahentium ad normam iuris.

Freedom to marry in the strict sense refers to what is required in the

»Cf. Q. 314.
1 Cf. αιηοη 1097, §j.
• Cf. De Smet, *De Matrimonio,* §679.

parties that they may validly and lawfully marry. Apart from local diocesan regulations which may exist (the law presumes that there will be some in canon 1020, §3), and apart from special circumstances to be mentioned below under (ii), the common law does not require freedom to marry to be attested by any formal document as such, except when the parties are from different dioceses. Cf. Q. 268.

(i) The documents or certificates or formalities which the law does require will be found to include or imply that the parties are free to marry. There is, in the first place, *testimonium baptismi* required by canon 1021, §1: "Nisi baptismus collatus fuerit in ipso suo territorio, parochus exigat baptismi testimonium. . . ." This is a grave law, and its obligation has often been reaffirmed by the *Congregation of the Sacraments.* The surest testimony of baptism is an extract from the register signed by the parish priest, and local law often requires this. In addition to proof of baptism, it contributes to the proof of freedom to marry, since, from canons 470, §2, 1103, §2, and 1988, the facts of marriage, orders, religious profession and nullity decree are to be entered in the baptismal register: in the event of a proposed marriage subsequent to these entries, the relevant facts will be recorded on the baptismal certificate. To be effective as a precaution against an invalid or unlawful marriage, the certificate must be issued within six months of the date on which marriage will be contracted, and local legislation may determine this point more strictly, as for example *Liverpool Synod,* 1934, n. 148: "Ne admittatur baptismi testimonium ad partem liberam probandam, si ante tres menses scriptum fuerit.'*

Secondly, the observance of the law regarding the *publication of banns* offers a contributory proof of freedom to marry. It is not necessary to record here the details of this law, contained in canons 1022-1030, except to notice that its observance may sometimes require a certificate from a parish priest other than that of the parish in which the marriage is taking place; canon 1029: "Si alius parochus investigationem aut publicationes peregerit, de harum exitu statim per authenticum documentum certiorem reddat parochum qui matrimonio assistere debet." Canon 1023, §2, leaves it to the Ordinary to determine the proof of freedom required in the case of parties who, for six months after reaching the age of puberty, have lived in places other than those in which the common law requires the banns to be published; he may require the banns to be published in all these places of six months' residence, or he may order other proofs to be obtained, including affidavits from the parties concerned.[1] We conclude, therefore, that a priest who observes the common and local law concerning baptismal certificates and banns, and who examines and instructs the parties according to canons 1019-1034, does not require any further certificate of freedom to marry, except in special circumstances.

(ii) Special cases calling for some document or other arise, for example, when the possibility of an impediment is suspected, and the doubt has to be removed by consulting the Ordinary,[3] or when proof of the grant of a dispensation is required. If a marriage has been previously attempted, even merely civil marriage, no matter how certain its invalidity may appear to be, a declaration of freedom to marry must first be obtained from the

[1] Cf. *Code Commission,* 3 June, 1918; *Liverpool Synod,* 1934, n. 149; Q. 270.
* Canon 1051.

Ordinary.1* In cases of widows and widowers, the death certificate of a former spouse is the obvious proof of freedom. Except in cases of necessity, a priest may not assist at the marriage of a *vagus,* one who has nowhere a domicile or quasi-domicile, until the matter has been referred to the Ordinary.3 Even though they may not be technically *vagi,* emigrants from foreign countries are to be treated as such, according to the Instruction of 4 July, 1921, which forbids priests to assist at their marriages, except in cases of necessity, before previously consulting the Ordinary. This is also the rule of *I Westm.,* Dec XXII, n. 7.

268.—Freedom to Marry: Diocesan Certificate

May it not be held that the obligation of communicating certain pre-matrimonial documents through the diocesan chancery, as set out in the 1941 *Instruction, refers to cases where one of the parties belongs, or has recently belonged, to a diocese in a foreign country, not to dioceses of the same country? Where the dioceses are contiguous, or even with a boundary line in the same city, it is a needless labour to transmit these documents through the chancery.*

S.C. Sacram., 29 June, 1941, n. 4 (a); *A.A.S.* XXXIII, p. 299: Haec S. Congregatio valde exoptat ut, antequam parochus ad matrimonii assistintiam procedat, licentiam suae Curiae, quam *nihil obstat* nuncupant, consequatur: id vero praecipit cum nupturientium parochi sunt diversae diocesis.

Quo accuratius in re tam gravi procedatur, Curia Episcopalis prorsus exigat ut parochus, cui licentia *(nihil obstat}* danda est, ad Curiam ipsam mittat opportuno antea tempore documenta omnia praematrimonialia una cum *exemplari,* cuius specimen in Appendice *(Alleg.* Iz) invenitur, omnibus notitiis ibi requisitis praedito. Hoc autem exemplari, prout in eadem cautum est, utatur sive Curia in concedendo *nihil obstat,* sive parochus in concedenda sacerdoti, legitima ceterum facultate praedito, licentiam assistendi matrimonio extra paroeciam forte contrahendo; illudque dcin caute asservetur in archivo paroeciali loci, ubi nuptiae initae sunt.

It is our opinion that this new regulation contained in the Instruction of the *Congregation of the Sacraments,* 29 June, 1941, need not be observed until the clergy have been so directed by their own Ordinaries.

With this reservation, it is quite clear that the interchange of documents in question is not restricted to the cases of persons belonging to another country, but applies equally to different dioceses within the same country. A previous Instruction, 4 July, 1921, which is now mentioned in all the manuals, was meant chiefly for foreign emigrants "in exteris dissitisque regionibus ad quas frequentes demigrant ex Europa opifices", and n. 5 of this document contained in substance the direction now found in that of 29 June, 1941, n. 4 *(a).* But in the 1941 Instruction the direction occurs within a section dealing with the obligations of all parish priests of different dioceses, and neither in this place nor in the suggested "form" is it implied that the regulation is restricted to dioceses in different countries. Indeed, the Instruction given in 1921, though chiefly for the cases of foreigners,

1 Cf. canon 1990; Q. 337.
* Canon 1032.

could be understood as a recommendation for all cases, and was so interpreted by the writers, e.g. Gougnard, *De Matrimonio,* 1937, p. 70: ". . . expedit ut sit recognitum curia episcopali . . . quod non est urgendum, nisi documentum mittendum sit extra patriam." It is quite evident that the 1941 Instruction is an advance upon that of 1921, just as the latter is an advance upon that of 6 March, 1911, which contained no mention of the episcopal curia, except an admonition to Ordinaries urging them to secure the observance of the law by the priests subject to them. *Festina lente* is a well-known Roman rule, and we may doubtless expect, say in 1961, a further Instruction which will convert "valde exoptat" into "id praecipit" and make the diocesan *nihil obstat* necessary even for the marriages of parties living within the same diocese.

If the new Instruction is observed, it will mean, of course, more work for everyone concerned, and more often than not the labour involved will be needless; that is to say, there will be many cases where one is already certain that the parties are free to marry, and the interchange of documents will not increase this certainty. But the same applies to the publication of banns which is often unnecessary, yet no one may for this reason neglect to publish them unless a dispensation has been obtained from the Ordinary.

269.—"S.C. Sacram;" 29 June, 1941

With reference to the 1941 *Instruction on Marriage Preliminaries is the method of issuing an Instruction a new departure or not? What is the binding force of an Instruction?*

The method was employed long before the Code, particularly by *Propaganda, e.g.* the Instruction to the English bishops on University Education 6 August, 1867, *Fontes, n.* 4868. It is clearly defined in the *Motu Proprio* of Benedict XV, 15 September, 1917, printed among the prefaces to the Code: "II. Sacrae Romanae Congregationes *nova Decreta Generalia* iamnunc ne ferant, nisi qua gravis Ecclesiae universae necessitas aliud suadeat. Ordinarium igitur carum munus in hoc genere erit tum curare ut Codicis praescripta religiose serventur, tum *Instructiones,* si res ferat, edere, quae iisdem Codicis praeceptis maiorem ct lucem afferant et efficientiam pariant. Eiusmodi vero documenta sic conficiantur, ut non modo sint, sed appareant etiam quasi quaedam explanationes et complementa canonum, qui idcirco in documentorum contextu peropportune afferentur." It is apparent in the Instruction of 1941 how closely the Sacred Congregation has kept to the text of the Code.

The binding force of an Instruction can be perceived from the terms used in the document. Thus in the Instruction from the *Congregation of Rjeligiotis* on the second year of the novitiate, 23 November, 1921: "Sanctitas porro Sua sententiam probavit simulque mandavit, ut hac de re instructio ederetur, cui omnes et singulae congregationes religiosae . . . integre se conformare teneantur." In the Instruction on Marriage Preliminaries a very clear distinction is drawn between the desires (valde exoptat) and the commands (id vero praecipit) of the Congregation. Cf. text in Q. 268.

What then is the difference between an Instruction so expressed and a new general decree issued as determined in n. Ill of the *Motn Proprio,* 15 September, 1917? Apart from the less solemn form in which it is

issued, the difference is that the preceptive portion of an Instruction is not a new law but a determination of the mode in which an existing law is to be observed. It is the law, for example, that the death of a former partner to a valid marriage must be proved before a second marriage is permitted; various Instructions, as far back as that of the *Holy Office,* 13 May, 1868, and as recent as that issued by *S.C. Sacram.,* 15 August, 1936, determine the method of proof. The law has always required proof of freedom to marry, as in canon 1020, §1; the recent Instruction prescribes that the exchange of documents to this end, when the parish priests concerned are of different dioceses, shall be done through the diocesan curia.

It must be conceded that a point may be reached when the preceptive part of an Instruction is of such a character that it appears to be a new decree rather than the determination of an existing one. If this should happen it is a matter for the respective bodies of the Roman curia to settle amongst themselves, since n. 111 of the *Motu Proprio,* 15 September, 1917, requires a definite procedure to be observed by a Roman Congregation before a new general decree may be issued.

Is there any difference between the binding force in conscience of a preceptive Instruction and that of a new decree? In our opinion there is none, apart from the fact that, as in all laws, the disregard of lawful authority is graver according to the gravity of the matter. Though it may be stated, therefore, in principle, that a decree is obligatory but an Instruction merely directive, as in Vcrmeersch-Creusen, *Epitome,* I, §152, an exception must be made for those points within an Instruction which, from their wording, are clearly preceptive. ". . . instructiones per se habent vim declarativam et directivam; quandoque tamen legem dant vel leges praeexistentes complent et mandante vel approbante Papa leges universales sunt"[1]. "Licetne istis Instructionibus quaedam, non contra sed ultra Codicem praecipere? Quod affirmandum est, cum a S. Pontifice dicantur esse *complementa* canonum. . . . Quid tunc *Instructiones* a novis legibus differunt? Novae leges per se stant; Instructiones accedunt ad legem, eam circumdant et quasi vestiunt . . . Sic in iure civili hodierno, usus habet ut, post latam a Parlamento legem, Rex seu princeps rei publicae decretum conficiat quo, per varia iussa, exeeutioni legis consulit?[2]

270.—Banns: Six Months' Residence

The directions of canon 1023, §2, *are generally disregarded. What is their bindingforce?*

Canon 1023, §2: Si pars alio in loco per sex menses commorata sit post adeptam pubertatem, parochus rem exponat Ordinario, qui pro sui prudentia vel publicationes inibi faciendas exigat, vel alias probationes seu conjecturas super status libertate colligendas praescribat.

Canon 1028, §1: Loci Ordinarius proprius pro suo prudenti iudicio potest ex legitima causa a publicationibus etiam in aliena dioecesi faciendis dispensare.

Code Commission, 3 June, 1918; *A.A.S.,* X, p. 345: Si pars post adeptam pubertatem plusquam per sex menses commorata fuerit in longissimis et dissitis oris, a quibus ut habeatur regularis attestatio libertatis status,

1 Sipos, *Enchiridion,* p. 34.
2 *Periodica,* 1929. p. 18.

longius tempus requiritur, cum tamen urgeat celebratio matrimonii, sufficitne in casu ad certiorandam libertatem status iuramentum partis cum testimonio duorum, vel, si non possint haberi duo, saltem unius, qui secum commorati fuerint illis in regionibus? Rwp. Rem committi prudenti iudicio Ordinarii, qui alias probationes, non excluso iuramento suppletorio, praescribere potest ad normam canonis 1023, §2.

S.C. Sacram., 4 July, 1921, n. 4; *A.A.S.*, XIII, p. 348: Quod si de vagis non agatur, tamen difficulter quoad alios emigrantes abest dubium de existentia impedimenti, ideoque, iuxta can. 1031, §1, n. 3, parochus eorum matrimonio assistere nequit inconsulto Ordinario; habito etiam prae oculis praescripto can. 1023, §2.

29 June, 1941, η. 6 (Z»); *A.A.S.*, XXXIII, p. 303: Proclamationes peragantur matrimoniales etiam in locis ubi nupturientes per semestre saltem post adeptam pubertatem morati sunt, si id prudenter censeat Ordinarius (can. 1023, §2), neque ab iisdem dispensetur nisi legitima causa comprobata (can. 1028), neque facile, ceteris neglectis probationis argumentis, procedatur ad iusiurandum suppletorium partibus deferendum (can. 1829, 1830).

The direction of canon 1023, that the case must be put to the Ordinary, whenever the parties have dwelt in some other place for six months after puberty, is disregarded in many dioceses of this country, and one could argue that there exists a custom *contra legem* which local Ordinaries tolerate in accordance with the terms of canon 5. In these days, when people move about frequently, the observance of the law would entail a lot of correspondence. But it is not a valid objection to the observance of the law that the parish priest of a six months' residence would not know the parties: for the purpose of banns is to acquaint local inhabitants of a proposed marriage, and amongst these people some would very likely remember a person who had lived there for six months.

It is for local Ordinaries, knowing that the law is not observed, to take whatever steps they consider necessary and opportune. Thus in *Liverpool Synod,* 1934, n. 149, we read that banns are to be published "in paroecia ubi nupturientes immediate antea habitarunt, si per sex integros menses ibidem permanserint". In the Province of Malines, with the approval of the Holy See, the following interpretation of canon 1023, §2, is sanctioned by the Council, 1920, n. 206: "Parochi est in singulis casibus, diligenter investigare an aliquid matrimonii celebrationi obsistat. Quodsi, facta inquisitione, ipsi constat, per documenta publica sive ecclesiastica sive civilia, per privata testimonia vel documenta fide digna, una cum affirmatione jurata ipsorum contrahentium, nihil matrimonio obstare ac praesertim nupturientes liberos esse, parochus non tenetur rem Ordinario exponere, nec publicationes in aliena paroecia faciendae sunt. Si vero, post diligentem investigationem dubium vel suspicio sit de existenti impedimento, Ordinarium consulat ejusque praecepta sequatur."

271.—Confession Before Marriage

May a parish priest insist on confession before marriage, for the purpose of avoiding scandal to the rest of the faithful, in the case of a Catholic who has for years neglected bis religious duties?

Canon 1066: Si publicus peccator aut censura notorie innodatus prius ad sacramentalem confessionem accedere aut cum Ecclesia reconciliari recusaverit, parochus eius matrimonio ne assistat, nisi gravis urgeat causa, de qua, si fieri possit, consulat Ordinarium.

Canon 1033: . . . cosdcmque vehementer adhortetur ut ante matrimonii celebrationem sua peccata diligenter confiteatur, et sanctissimam Eucharistiam pie recipiant.

(i) The general principle of the moral theologians, that public sinners must be refused the sacraments, rests on the obligation to avoid co-operating in a sacrilegious act as well as on the necessity of avoiding scandal. The first of these reasons is the more important, but in the case of marriage it is actually of lesser weight, since the priest is not the minister of the sacrament. The directions of the canon are quite clear. The priest should, if possible, have recourse to the Ordinary and abide by his decision, but if there is no time to do this, he may assist at the marriage provided there is an urgent reason. Amongst urgent reasons justifying Lis assistance, all the commentators mention the danger of civil marriage. Therefore, even in the case of a public sinner, it cannot be said that the priest's assistance at marriage is to be refused as a matter of course.

(ii) The fact of refusing to go to confession before marriage obviously does not put a person in the company of public sinners; for one thing he may not be burdened with grave sin. Nevertheless, to make sure that the recipients of this sacrament arc in a state of grace, they arc to be urged to receive the sacraments previously. The "vehementer adhortetur" of canon 1033 has its counterpart in the rubric of *Rituale Romanum*, Tit. vii, cap. 1, n. 14, and in *Cone. Trid.,* Sess. XXIV, *De Ref* cap. 7. In all of these texts confession is urged before marriage, but it is not made a positive law, as it is, for example, in the case of a person conscious of grave sin in approaching Holy Communion.

In some French dioceses, it appears that the local statutes order confession *sub gravi.*[1] Such rules probably date from a distant period when discipline was more strict, and it is the common view that they can no longer be enforced, e.g. Chelodi: "Plura tamen iura particularia, quoad confessionem, veram et strictam obligationem statuerant, etiam sub poena denegatae benedictionis nuptialis. Qui rigor minus probandus videbatur et nunc, certissime, standum est C. qui habet 'vehementer adhortetur'."[2]

§2. MARRIAGE IMPEDIMENTS

272.—Chastity and Marriage Consent

Bertha, a Catholic, is married invalidly to Titius, a Jew, before the civil registrar. Her first two children were delivered by Cesarean section, and she is advised by the doctors either to be sterilised or to use contraceptive instruments, since a further pregnancy might be fatal. She declines this advice, being anxious to return to her duties as a Catholic, and resolves to refuse the use of marriage to her husband for the future. Can this marriage be revalidated?

[1] *CL'Ami du Clergi,* 1927, p. 294.
[2] *'lus Matrimoniale,* §23.

This case is of great interest as regards the validity of the consent to the marriage contract. The marriage is invalid, firstly because of defect of form, and secondly because of the impediment of difference of worship. On both these headings its revalidation could be quite easily effected by renewing consent with the usual form, after obtaining a dispensation from the impediment. It appears quite certain that Bertha is entitled to refuse the marriage debt in such circumstances, and the difficulty is whether a renewed consent, conditioned by a resolve to refuse the marriage debt, would be valid.

The object of marriage consent, as expressed in canon 1081, §2, is "ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad generationem". It is, namely, the right to marital intercourse which is the object of the contract, which right can be validly given and received, even though its use is, rightly or wrongly, withheld. This rather subtle distinction between the right and its use enters very closely into the marriage laws of the Church. It may be examined in a number of Rota judgements in which the validity of consent turns entirely on discovering whether an immoral intention *contra bonum prolis* is concerned with excluding the right to normal intercourse, or merely with the non-use or the afiuse of rights contracted; if the former, the consent is invalid; if the latter, it is valid.

A distinction of this kind, which might escape the notice even of a theologically minded person, is nearly always unknown to the parties at the time of their contract. What they actually intended has to be deduced from various attendant circumstances, and certain legal presumptions are in use in order to arrive at a decision. For example, the perpetual exclusion of normal marital actions creates a presumption that the right is excluded, since it is scarcely possible to conceive a right being granted and yet qualified by a condition that it will never be used. On the other hand, the merely temporary exclusion of normal marital relations is presumed to mean that the use, not the right, is excluded in making the contract. These legal presumptions have to yield to the truth, if the opposite is certainly established, and the instance which has long been in dispute is the possibility of a valid matrimonial contract to which is attached a vow of perpetual chastity. Provided the notions of marriage and virginity are accurately defined, it can be shown that marriage with a condition to preserve perpetual chastity is a true marriage.[1]

It is possible, therefore, to revalidate the above marriage. Since it is proposed to marry with a condition, the Ordinary should be informed of this circumstance when application is being made for the dispensation; and Bertha should be instructed that she will be conceding marriage rights, when her marriage is revalidated, but withholding their use until, at least, she reaches an age when further child-bearing is impossible.

273.—Divorce and Marriage Consent

To what extent is the validity of marriage affected in the case of non-Catbolics, whose religions convictions may be quite definite that the divorce of a Christian marriage is permittedfrom Matthew xix, 9 ?

1 Cf. Ford, *The Validity of Virginal Marriage.*

From canon 1084 it is clear that a simple error concerning one of the essential properties of marriage docs not invalidate the consent, even when the contract would never have been made except for this error, i.e., even in the case of a Protestant who feels so strongly on the subject, that he would under no circumstances marry except for his conviction that the marriage can, in certain contingencies, be dissolved. Inasmuch as consent at the moment of making the contract effects the marriage sacrament—*matrimonium facit consensus*—the Church considers only what a person intended to do at that moment. For the consent to be judged invalid by an ecclesiastical court, the evidence offered must prove that at the time the contract was made there was a positive act of the will excluding its indissolubility. This defect is, indeed, more easily proved if it can be shown to exist from the words of the marriage rite, or from a previous agreement entered upon by the parties, or even by an express condition made only by one party; but a positive act of the will excluding this essential property of marriage alone suffices, though it is difficult to prove.

The law is well stated in a Rota judgement1: "Cum simplex error circa matrimoni indissolubilitatem, etsi dat causam contractui, consensum matrimonialem non vitiet, valide matrimonium contrahunt, nisi aliud obsit, protestantes aliique qui falso putant matrimonii vinculum solvi posse. Praevalet scilicet generalis voluntas de matrimonio iuxta divinam institutionem ineundo, eaque privatum illum errorem quodammodo absorbet. . . . Si vero alterutra vel utraque pars positivo voluntatis actu excludat matrimonii indissolubilitatem, invalide contrahit. Cum enim vel unus c contrahentibus intentionem habeat huiusmodi: 'volo contrahere matrimonium, sed nolo tradere alteri parti ius perpetuum', positivo voluntatis actu indissolubilitatem, quae est ex essentialibus proprietatibus matrimonii, excludens, ipse positive vult matrimonium, et simul positive non vult, ita ut duo contrarii positivi actus mutuo se elidant, vel posterior, utpote specificus, priorem destruat."

Accordingly, the answer to the above question, as it stands, is that the validity of the contract is not affected by a non-Catholic's religious beliefs. The point to be examined is whether these errors positively affected the consent at the time it was made.

274.—Safe Period and Marriage Consent

Is there a valid marriage consent when the parties agree to limit their marital right to the safe period?

Canon 1081, §2: Consensus matrimonialis cstactus voluntatis quo utraque pars tradit ct acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per sc aptos ad prolis generationem.

Canon 1086, §2: At si alterutra vel utraque pars positivo voluntatis actu excludit matrimonium ipsum, aut omne ius ad coniugalcm actum, vel essentialem aliquam matrimonii proprietatem, invalide contrahit.

Decisiones 5\R. *Rotae,* XVI, p. 108; *coram* Chimcnti, 14 March, 1924, n. 2: Ita in Codice (canon 1086, §2), simulatio huiusmodi partialis aequiparatur totali ad effectum nullitatis matrimonii. . . . Ut patet, verba

1 *Derisiones,* XVI, p. 64; *coram* Maximo Massimi.

Gasparri probe conveniunt cum citato canone. Apud Gasparri: "Si contrahens excludit vel limitat (iuris coeundi) ordinationem ad prolem, vcl perpetuitatem, vel unitatem"; et in Codice: "Si pars excludit omne ius ad coniugalem actum" aequivalet formulae "excludit *vel limitat* (iuris coeundi) ordinationem ad copulam". Habetur igitur nullitas matrimonii, si quis non concedit *omne* ius ad coniugalem actum, sed hoc ius limitat. . . .

n. 3: Revera, ut dictum est, simulatione partiali invalide contrahit non tantum qui excludit, sed etiam qui limitat matrimoniale ius. (Cf. Lehmkuhl, *Theol. Moralis,* II, n. 680.) Quod ceteroquin ipsa sententia appellata concedit cum dicit: "Non est dubium quin et huiusmodi propositum per se valet coniugii vires dispendere, si ipsum ius fuerit plane subductum ad rectum usum coniugalis actus, tempore quo proles excluditur; propositum enim, his in adiunctis, circumscriberet ius matrimoniale perpetuo concedendum.

The publicity given, in recent years, to the new computation of the safe period, has introduced a doubt whether the intention of restricting intercourse to those times which arc not favourable to conception is such as to invalidate matrimonial consent. If the new discovery enters to any extent into the marriage relations of Catholics, which may be doubted, it will usually be on the part of people who have married without any reference to periodical abstention. Or, if the idea of limiting conjugal intercourse in this way has preceded marriage, the parties will usually have made the contract with the general intention of entering upon matrimony as the Church understands it, in which case this intention will prevail over any other imperfectly formulated ideas. But it is quite otherwise if, by a positive act of the will, consent is given with definite limitations to the right of intercourse at certain times, especially if this is made a condition *sine qua non* or if it is reduced to an explicit agreement. There is room for doubting the validity of a marriage so contracted, and the doubt can be removed only by applying the principles which govern any intention *contra bonum prolis.*

Those authors who have given their attention to this subject all agree on the principle that an intention excluding the fertile period invalidates the consent, *if the right itself is excluded.*

Noldin: "Qui contrahunt sub condicione nonnisi diebus infecunditatis congrediendi, invalide contrahunt, si excludere volunt ipsum ius continuum in corpus coniugis, similiter ac si solum pro aliquot annis tradere vellent ius in corpus. Si autem volunt continuum ius tradere et mere non uti quibusdam temporibus, valide contrahunt."[1]

Salsmans: "In dies autem magis concordes sunt auctores affirmantes matrimonium invalidum si sponsi stricte voluerint restringere *ius* matrimoniale ad dies infecundos."[2]

Vermecrsch: "Si alteruter coniugum aut uterque ita matrimonium contrahere voluerit ut ius ad copulam non daretur nisi tempore ageneseos, fecerint matrimonium nullum. Substantiale enim est ut uterque coniux ex contractu hauriat ius perpetuum et continuum ad copulam. Conventio autem qua, illaeso jure essentiali, usum limitarint ad tempus sterilitatis cum vera matrimonii natura stare potest."[3]

Mancini: "Vel enim restrictio illa in ipsam contractus substantiam transit, et tunc deficit in contractu consensus qui vere matrimonialis sit, scilicet

[1] *Tbtol. Moralis,* III, §631.
[1] *E.T.L.,* 1934, p. 568.
[•] *Periodica,* 1934, p. 241.

'actus voluntatis quo utraquc pars tradit et acceptat ius in corpus perpetuum' (can. 1081, §2); illa igitur limitatione temporis ligatum sub hac ratione invalidum esset matrimonium etiamsi restrictio non fuerit ad dies infoecundos; Vel restrictio est ad modum contractus vel pacti contractui matrimoniali adiccti, quoad usum iurium quatenus in potestate relictum voluntatis, quod consensus matrimonialis valorem haud infirmat."[1]

There can be no doubt whatever about the principle that the positive exclusion of the right to intercourse, even temporarily, invalidates the consent. The principle is an integral part of our matrimonial jurisprudence and has been formulated repeatedly in official judgements. It is perfectly possible, in these days, when anyone may study the theory of the safe period from books and pamphlets, for a person deliberately to exclude not only the *use* of marriage but the *right* itself during stated periods. The *practical* difficulty is how to discern whether this has actually been done in a given case, since parties getting married are either ignorant of this legal distinction between *jus* and *usus,* or are incapable of appreciating its force. Presumptions arc useful and all the presumptions favour the validity of consent, namely that the parties excluded only the use of marriage.

Nevertheless, every *praesumptio iuris* is accompanied by the qualification: "nisi aliud constet". We think that in nearly every case the presumption will hold because there will be no indications to the contrary' forthcoming. It will be found that the safe period intention, condition or pact, is attached to the use of the rights contracted not to the rights themselves. The truth of this statement is deduced from the very' special type of temporary exclusion exemplified in a safe period intention. In all the published cases, examined by the present writer, in which temporary exclusion of intercourse enters, the exclusion refers to a continuous period, e.g. for the first years of the marriage, and it is easy to see that the right itself could be excluded during this period. As the parties conceive their contract, they do not consider themselves as fully and properly married, i.c. as possessing the rights and obligations of marriage, during these years. But it would be extremely odd for any normal person to regard himself as properly married only for certain days in each month! This is really what would be implied, if matrimonial consent is partially simulated by restricting the deliverance and acceptance of marriage rights and obligations to the infertile periods.

An exclusion of right can easily be imagined for a temporary continuous period, but it is difficult to imagine it in the case of the monthly safe period. It is difficult but not impossible, for the presumptions hold "nisi aliud constet". In days when all kinds of fantastic ideas about marriage are current, matrimonial consent could be so limited by a safe period intention as to exclude during certain times the rights which belong to marriage. Not easily, indeed, but quite possibly, the result would then be an invalid marriage.

275.—Ignorance of Natural Law Ixîpediment

Noldin, "Theol. Moralis," III, §607, *states: "Si impedimentum indispensabile est (e.g. ligaminis), matrimonium omitti debet, quidquid incommodi ex omissione*

[1] *Pa/aeestro dei Clero,* 195 J, p. 71.

sequatur, nisi adiuncta sint eiusmodi, tit impedimentum nupturientibus sine gravissimo incommodo tertii revelari non possit." How is the lawfulness of this to be explained, particularly the lawfulness of the priest's assistance ?

(i) It used to be discussed before the Code, and still is to some extent, whether ignorance exempted one from the incidence of an impediment*juris ecclesiastici,* and whether the same ceased in grave necessity from *epikeia.* Canon 16, §1, has settled the point of ignorance as regards diriment impediments in favour of the law, and canons 1043-1045 have to a large extent provided for necessitous cases. Cf. Cappello, *De Matrimonio,* §§198, 199; Payen, *De Matrimonio,* §§ 566, 567.

(ii) When the impediment is of the natural law, as *ligamen* (the bond of a previous marriage), it is certain that it cannot be dispensed and that no kind of ignorance or necessity can ever make the marriage canonically valid. If a case occurs, as Noldin contemplates, the solution must be sought, not in canonical principles, but in theological ones which are applicable to the internal forum of conscience alone, and doubtful cases will be solved with the aid of probabilism. It is from this latter angle that Noldin is viewing the case. It means that a judgement is formed that the parties are to be left in good faith, if all the conditions for such are present, about the invalidity of their marriage; and when it is a question, indeed, of applying this principle to a putative marriage already contracted, there is no particular difficulty. It is the solution which Tennyson adopts for his hero in *Enoch Arden,* and the common example cited by theological writers in explaining the principle of leaving people in good faith.

(iii) For the assisting priest in a similar case, when the marriage is not yet contracted, the difficulty is greater, because he is not ignorant of the invalidity of the marriage which is being attempted. If time permits, he will have recourse to the Ordinary, but, if this cannot be done, there are sufficient reasons, we think, justifying his assistance. He may certainly do so when his knowledge has been obtained from the confessional, and the reasons which justify his action in this extreme case of necessity may also be invoked in other contingencies. For he is not himself administering an invalid sacrament but merely co-operating by his assistance; it is for this reason that a priest is not absolutely forbidden to assist at the marriages of public sinners, as in canons 1065, 1066. In the case Noldin mentions the parties are not formal sinners, being excused by ignorance; they are persons requiring the priest's assistance as part of a legal form which, in their case, is absolutely invalid. If a priest may give this assistance to persons who arc public sinners, there seems no reason why he should not do so in favour of persons invalidly contracting marriage, provided that there arc justifying causes of the gravest kind.

The point, raised by Noldin in his section on dispensing impediments, is usually discussed by the writers when explaining the causes which excuse one from revealing impediments. Cf. Cappello, *op. cit.,* §179; Gougnard, *De Matrimonio,* p. 109; De Smet, *De Matrimonio,* §67; Payen, *De Matrimonio,* §480.

276.—Non-Catholics and Impediments

At a recent clericalgathering, a parishpriest stated that be was instructing a convert who had married herfirst cousin—also a non-Catholic—in a register office, and he asked the opinion of those present as to what ought to be done about the marriage. "A" thought that the marriage was invalid on account of the impediment of consanguinity. He was contradicted by "B" *who ventured to assert that non-Catholics are not bound by matrimonial impediments of ecclesiastical origin.* "C", *submitting that only baptised persons, whether Catholics or not, were bound by such impediments, was of the opinion that in this case the marriage was to be presumed validfrom canon* 1014, *on account of the doubtful baptism of both the Protestant parties. What is the true solution of this case ?*

The solution depends on the validity of the previous baptisms.

(i) *All validly baptised* non-Catholics are bound by the laws of the Church unless they are expressly excluded, as they are, for example, with regard to disparity of worship.[1] Whatever may have been the law in earlier times, it is now certain that all baptized non-Catholics are so bound. It is not explicitly stated in the Code, but it is there implicitly in such canons as 1099 or 1070. It may also be deduced from clauses in various *pagellae* of faculties permitting Ordinaries to dispense from certain impediments at the reception of converts.[2] In the above case, B's solution is incorrect. "Id certissimum est, ac illi A.A. catholici qui de hoc dubitant, nesciunt quid dicant."[3]

(ii) *The unbaptfcçed* arc indirectly bound by the matrimonial impediments when they contract marriage with a baptized person. When contracting marriage with another unbaptized person they are not bound by those impediments which are of purely ecclesiastical law; this is deduced from canon 1038, §2, which declares the right, inherent in the supreme authority of the Church, to establish impediments for the baptized. In §1 the canon states that it belongs to the same authority to declare authentically the impediments which are of divine law. The unbaptized, therefore, are bound by those impediments which are declared by the Church to be of divine law, whether natural or positive, for example, *ligamen* and impotence. The impediment of consanguinity between cousins is certainly ecclesiastical not natural law. "Matrimonium in secundo et tertio gradu lineae transversae est certe validum, nisi lex civilis illud irritet, quia infideles constitutionibus canonicis non arctantur. . . ,"[4]* The *Holy Office,* in a reply dated 18 December, 1872, directed that those converts were not to be disturbed who had contracted marriage before baptism within the forbidden degrees.

(iii) *The doubtfully baptised.* The Code has introduced a new presumption for deciding the validity of marriages already contracted by doubtfully baptized persons.[§] Under the Code, that is to say from 19 May, 1918, the presumption favours the validity of the marriage. Assuming that the

1 Canon 1070.
* Cf. Cappello, *De Matrimonio,* §66
▪ Gaspard, *De Matrimonio,* §257.
4 *Ibid.,* §711.
• Cf. Q. 293.

marriage ia the above case had been contracted since this date, it is to be regarded as valid. "Saltem si agitur de matrimonio *contracto* communior sententia tenet, in jure ecclesiastico post Codicem in dubio de baptismo non amplius vigere praesumptionem de valore baptismi, sed unice extare praesumptionem de valore matrimonii."[1] It is, however, a presumption which must yield to the truth. In order to meet the possible contingency of the baptism of one of the parties being established as valid at some later date, it is advisable *ad cautelam,* but not strictly necessary, to revalidate the marriage at the time the convert is received into the Church.

TH.—The Unbaptized and Impediments

Is it witbin the competence of the State to institute diriment impediments for the marriages of unbaptiyed persons, for example, by declaring marriage between an un· baptised subject of the State and a Jew to be invalid?

In Q. 312 (i) a similar point is discussed, namely the power of the State to impose a certain form to be observed, under pain of invalidity, whenever unbaptized persons contract marriage amongst themselves. It is shown that the Church fully recognizes this power as lawful and necessary.

In principle the same must be said of diriment impediments in general, provided these positive laws are reasonable and not opposed to the natural law. Gougnard in *De Matrimonio,* pp. 597-406, briefly summarizes the conclusions of modern Catholic writers regarding the power of the State over the marriages of all its subjects in three propositions:

(i) Prorsus reiiciendae sunt theoriae quae societati seu principi civili tribuunt potestatem circa valorem matrimonii fidelium.

(ii) Potestas auctoritatis civilis quoad matrimonia fidelium reducitur ad effectus qui vocantur mere civiles.

(iii) Auctoritas seu princeps civilis habet exclusivam potestatem regendi matrimonia subditorum infidelium.

The attitude of the Holy See and of canonists concerning this last proposition is evident in a number of documents giving instructions, or solving doubts, in cases which have come indirectly under the authority of the Church owing to the subsequent marriage of the parties with baptized persons; a judgement on the validity of marriage contracted in infidelity is often necessary. The clearest of these instructions is that quoted in Q. 312, which is given by most of the canonists writing on the subject, and the only doubts that can arise are on the individual applications of the principle given under (iii) by Gougnard; it may often transpire that the civil impediment is against the natural law or, what amounts to the same thing, is unreasonable. Thus, Cappello quotes an answer given by *Propaganda* in 1674 declaring, amongst other things, that "loquacity" in a woman was not a diriment impediment to marriage, notwithstanding the belief of Confucius that it was?

In applying the principle to a civil law declaring marriage between an unbaptized subject and a Jew to be invalid, we have the authority of St. Thomas for our guidance. In discussing the marriage of infidels in his

[1] *Periodica,*. 1936, p. 153.
[1] *De Matrimonio,* §76.5.

Commentary on the Sentences he puts the objection, on analogy with the canonical impediment of disparity of worship, that a gentile cannot marry a Jew because their worship is different. The answer is instructive, since the point is admitted provided the positive law of the State has so determined: "Ad tertium dicendum, quod inter fideles est matrimonium, ut dictum est, prout matrimonium est in officium naturae. Ea autem quae pertinent ad legem naturae, sunt determinabilia per ius positivum; et ideo si prohibentur ab aliquo iure positivo apud cos infideles contrahere matrimonium cum infidelibus alterius ritus, disparitas cultus impedit matrimonium inter eos."[1]

The use of the words "prohibentur" and "impedit" in this text does not imply that St. Thomas merely concedes to the State the power to institute what the canonists call "prohibiting impediments". He is not here concerned with the distinction between diriment and prohibiting impediments; moreover, it is not strictly relevant to the point at issue which is wholly concerned with the State's power over marriage in general.[2]

By decrees dated 15 September, 1935, and 14 November, 1935, the Nazi government in Germany forbade marriages between Aryans and Jews under pain of nullity.[3] The law affects, of course, all Germans irrespective of their religion, and as such we must regard it as an invalid and bad enactment, since it pretends to determine the validity of the marriages of Christians, which is the province of the Church alone. Whether a law of this kind, if restricted to the unbaptized, may be regarded as valid on the principles we have been discussing, raises an interesting point. All human actions must be judged according to their circumstances, and this Nazi law is merely one practical consequence of a theory of racialism which the Holy See and Catholic theologians condemn. We have not seen the question discussed, but it appears to us that the circumstances of this law are such that it should properly be regarded as invalid, even if it were wholly restricted to the unbaptized. The question may be settled at some future date when an ecclesiastical court is called upon to decide a marriage cause, which turns upon the validity or invalidity of a marriage contracted by two unbaptized Germans in defiance of the Nazi law.

Apart however from the present circumstances, and supposing that the law is judged to be necessary for the peace and welfare of the communit}', it must follow from the doctrine outlined above that the State is not exceeding its powers in declaring marriages of its unbaptized subjects with Jews to be invalid.

278.—Ligamen: Presumed Death

An airman, missing for three years, is presumed by the Ministry to be dead, since his aeroplane was known to have been shot down·, his wife is receiving the pension payable in such cases. Are these facts sufficient canonical proof for requesting the Ordinary's permission for the woman to marry again?

S.OJf., 13 May, 1868; *Fontes,* n. 1002: . . . probatio obitus ex coniecturis, praesumptionibus, indiciis et adiunctis quibuscunque, sedula certe et

[1] IV Dist, XXXIX, q. 1, art. z, ad 3; Panna, VII, p. 10zj.
[2] Cf. Cappello, *De Matrimonio,* §79 ad finem.
[3] *Apollinaris,* 1936, p. 188; *Jus Pontificium,* 1936, p. j.

admodum cauta investigatione curanda erit, ita nimirum ut pluribus hinc inde collectis, eorumque natura perpensa, prout scilicet urgentiora vel leviora sunt, seu propriore vel remotiore nexu cum veritate mortis coniunguntur, inde prudentis viri iudicium ad eamdem mortem affirmandam probabilitate maxima, seu morali certitudine, promoveri potest.

20 July, 1898: Dummodo agatur de viris qui *certo* adstiterunt pugnae de Adua, et peractis opportunis investigationibus, indubitanter dignosci nequeat, an vir reapse mortuus ceciderit, attentis specialibus circumstantiis in casu exposito occurrentibus, et valida praesumptione obitus, Ordinarius permittere poterit transitum ad alias nuptias.[1]

28 June, 1865, Fozr/fj·, n. 984: Utrum provisiones legis civilis de absentibus coniugibus, locum certitudinis moralis de eorum morte tenere possint, ac consequenter utrum derelicti coniuges, perfectis et impletis istis provisionibus, aliud matrimonium legitime contrahere valeant? Rw/. luxta expositum *Negative,* et expendendos esse casus particulares. . . .

The highest kind of probability, approximating to moral certainty, is required in establishing a presumed death, because the impediment is one of divine law. The Instruction of 1868 is the *locus classicus* on the subject and is still referred to by the *Congregation of tbe Sacraments* in deciding cases sent to Rome; an English version of the document maybe seen in *Leeds Synods,* 1911, p. 102. The decision given in 1898, after the Italian military disaster at Adowa, is also frequently cited. The force of *Fontes,* n. 984, is to reassert the accepted rule that a civil act is not the same as canonical proof; but it is agreed that it is corroborative proof, and it may be cited, at least, as evidence of "common report of death" referred to in n. 8 of the 1868 Instruction; similarly, as in n. 7, the fact that an insurance company has accepted its liability can be used as an indication arguing the fact of a person's death.

The chief objection to be answered in all cases of "missing, presumed dead" during a war, is the possibility that the person is a prisoner, either unidentified, or unable to communicate with his relatives and friends; absolute certainty will probably be unobtainable until some little time after the end of the war. Absolute certainty is, however, not required, as is evident from the above texts, but all the information which can possibly be obtained should be forwarded to the Ordinary; for example, whether the whole crew of the aeroplane is believed to have perished; if some were saved, whether every enquiry has been made, without result, through the \ratican, the Red Cross or other agencies; whether the former marriage was happy; whether there is any suspicion that the man was unwilling to return to his wife.

The decision is left to the prudent judgement of the Ordinary who, if not satisfied, may refer the case to the Holy See; if he refuses the petition altogether, the woman may herself appeal to the Holy Sec. We think, therefore, that a correct answer to the above question is that a petition may properly be addressed to the Ordinary, in cases where the Ministry presumes death, provided some additional indications are given, or—what amounts to much the same thing—provided the reasons on which the Ministry has come to a decision are also given in each case as fully as possible.

It is, of course, quite certain that, before a second marriage, these rases

[1] Quoted by Cappello, *Dt Matrimonio,* §400.

must be referred by the parish priest to the Ordinary's judgement. C£ canons 1019, §1; 1097, §1.1; 1031, §1.3.

279.—Ligamen and Civil Divorce

A Catholic woman, validly married to a convert, on being deserted by him obtained a civil divorce, thereby causing considerable scandal in the district. There is no likelihood of her returning to her husband, who is known to be living with another woman. She understands, of course, that she may not marry again whilst her husband is living. May she be admitted to the sacraments?

Civil divorce was regarded by Cardinal Gasparri and others as intrinsically evil, and therefore never to be permitted for any reason. In more recent times the theory favoured by most theologians and canonists is that, for extremely grave reasons, civil divorce may sometimes be permitted, since it may be regarded as a disruption merely of the civil effects of marriage, and therefore not intrinsically evil; the bond of marriage remains, and, though in the eyes of the State legally free, neither of the parties is able to contract a fresh marriage.

It is attended, nevertheless, by so many evils (not the least being the scandal caused to the body of the faithful who do not, or cannot, appreciate the exact point at issue) that it is gravely wrong to petition for a civil divorce unless permission is first obtained from the Ordinary, who alone is competent to decide whether the reasons justify it. This doctrine, deduced from certain directions of the Holy See, is expressed in Decretum 81 of the *IVtb Provincial Council of Malines,* 1920 as follows: "Inde sequitur gravis piaculi reatum incurrere coniuges catholicos qui, stante matrimonio coram Ecclesia valido, sine urgentissima et gravissima causa, ab Ordinario cognoscenda, divortium civile qua actores sollicitare non dubitant." This was modified in the *Vth Council,* 1937, Decretum 53, and now reads: "Sed gravis piaculi periculum incurrunt si divortium civile plenum sollicitare non dubitant." The reason for the slight change appears to be that a civil law of 1927 provided by "separation" all the civil advantages which formerly could only have been enjoyed by "divorce". The principle, however, remains intact, and an Ordinary may permit a petition for a civil divorce, when the rights of "separation" due to the innocent party cannot otherwise be obtained, or for any other grave reason.

The Catholic woman in the above case must, in our view, obtain the Ordinary's sanction, which should have been sought before she instituted proceedings for divorce. Having obtained it, the scandal can be removed by explaining exactly what her present condition is: it is the condition, namely, of one who is lawfully separated but enjoying no right to marry whilst her husband is alive. She may then be admitted to the sacraments, it being assumed that she repents of her action and of the scandal caused.

Cf. *Collationes Brugenses,* 1931, p. 372.

280.—Crimen: Promise of Marriage

Since, Jrom canon 1017, *the promise of marriage lacks alljuridical effect unless it is drawn up in canonicalform, does it notfollow that tbe impediment ofcrimen does not arise unless the promise ofmarriage is exactly as described in canon* 1017?

Canon 1017, §1: Matrimonii promissio sive unilateralis, sive bilateralis, irrita est pro utroque foro, nisi facta fuerit per scripturam subsignatam a partibus et vel a parocho aut loci Ordinario, vel a duobus saltem testibus.

Canon 1075.1 : Valide contrahere nequeunt matrimonium : Qui perdurante eodem legitimo matrimonio, adulterium inter se consummarunt et fidem sibi mutuo dederunt de matrimonio ineundo vel ipsum matrimonium, etiam per civilem tantum actum, attentarunt.

The necessity of a canonical form[1] for a valid promise of marriage did not arise till *Ne Temere,* 19 April, 1908, and the legislation of that decree is contained in canon 1017, §1. Consequently, the doubt we are asked to solve could only have arisen since *Ne Temere,* but it was not, it appears, till Boudinhon wrote on the subject in *Jus Pontificium,* 1951, p. 56, that any canonist adverted to the point. He defended the view that for the impediment of canon 1075.1 it is necessary to have a formal engagement to marry, or the attempt at such, as described in canon 1017, §1. His argument is that a private, informal marriage contract—such as was recognized to be valid before the Tridentine *Tametsi* decree—is insufficient for the impediment of *crimen* in the latter part of canon 1075.1 : there is required at least the attempt to make a formal contract, be it merely a civil one. Similarly an informal promise of marriage—recognized as valid before *Ne Temere*—must now be reckoned insufficient for the impediment of *crimen* which arises from a promise: there is required an attempt, at least, to enter upon a formal betrothment as described in canon 1017, §1. Before the Council of Trent no form was necessary for consent whether *de praesenti* (marriage) or *de futuro* (betrothment). A canonical form for marriage was introduced by *Tametsi,* and for betrothment by *Ne Temere',* therefore, since *Ne Temere,* the impediment of *crimen* is not constituted by a private informal engagement to marry.

There are obvious difficulties against this view, but we have not found any writer who discusses them adequately: the criticism of Boudinhon in *Periodica,* 1932, p. 237, does not, we think, fairly meet the historical argument. What we have found is that every canonist, whether aware or not of Boudinhon's point, simply takes it for granted that by "fidem sibi mutuo dederunt" in canon 1075.i is not meant exclusively "per scripturam subsignatam, etc.," as in canon 1017, §1. The most authoritative of these commentators is Gasparri, writing the year after Boudinhon, in *De Matrimonio,* I, §674, f. He does not mention him by name but he could hardly be unaware of the view propounded by a colleague, which he expressly rejects: "Tandem ad impedimentum inducendum sufficit *privata* matrimonii promissio et non requiritur *sponsalitia* ad normam can. 1017. . . ."

Similarly, Chrétien, *De Matrimonio* (1937), §168 : ". . . nec necesse est, ut singulariter opinatur Boudinhon, *fidem* intclligi de sponsalibus." Cf. also, Vermeersch-Creuscn, *Epitome* (1934), §351; Cappello: *De Matrimonio* (1939), §482: "opinio quae tenet . . . requiri promissionem factam ad normam can. 1017 iuridico fundamento destituitur".

The manualists, generally speaking, are of the same mind, but occasionally they express it with far less assurance than some of the above writers, e.g. Noldin, *TheoK Moralis,* III, §581 : "Quaestio, num adsit impedimentum, si in promissione non servantur condiciones per decretum

1 Cf. Q. 264.

Ne Temere praescriptae, co vel magis affirmanda videtur, quod *Codex* ad contrahendum impedimentum non exigat sponsalia sed simplicem promissionem matrimonii."

Faced with so many authorities we have no option but to reject Boudinhon's interpretation. That the Holy See is accustomed to issue dispensations from this impediment, even when the promise of marriage is private and informal, is a strong point against it; but we cannot see any great value in the objection that, if Boudinhon is correct, the first degree of the impediment would practically vanish from the list. This, it would seem, is rather a point in its favour. The history of impediments records their gradual reduction from the Council of Trent onwards, and seeing that the *Congregation of the Sacraments* has recently lamented the number of invalid marriages arising from occult impediments being undetected,[1] it would be a step in the right direction if the first degree of *crimen,* always difficult to detect and usually quite unsuspected by the parties themselves, could be reduced by adopting a stricter interpretation of the law, as Boudinhon suggests.

§3. DISPENSATIONS

281.—Implied Dispensation From Crimen

A woman divorced from her first husband and civilly united to a second has obtained a certificate of freedom to marry the second, owing to the presumed death of the first during the war. What, if anything, should be done about the impediment of crimen in the case?

Canon 1053: Data a Sancta Sede dispensatio super matrimonio rato et non consummato vel facta permissio transitus ad alias nuptias ob praesumptam coniugis mortem, secumfert semper dispensationem ab impedimento Drovcniente ex adulterio cum promissione vel attentatione matrimonii, si qua opus sit, minime vero ab impedimento de quo in can. 1075, nn. 2, 3.

(i) If the certificate of freedom was obtained from the Holy See, as is often necessary when the death of a former partner cannot be established to the satisfaction of the local Ordinary, it is certain from the above canon that a dispensation from the first degree of *crimen,* not, however, from the other two graver degrees, is thereby implied. It is one of the few implied dispensations remaining in the law of the Code. The dispensations formerly implied in a dispensation from disparity of worship have now certainly ceased.

(ii) But a certificate of freedom obtained from the local Ordinary does not include a dispensation from the first degree of *crimen.* This may not be quite clear from the wording of canon 1053, but it is certainly so in the decree *S.C. Sacram.,* 3 June, 1912, on which this canon is based; the text is in *A.A.S.,* IV, 1912, p. 403, and in *Fontes,* n. 2106. Cf. Payen, *De Matrimonio,* §§717 & 724; Gougnard, *De Matrimonio,* p. 463. Unless the local Ordinary expressly dispenses the impediment of *crimen,* either from his

[1] 29 June, 1941, n. 5.

delegated faculties or from the powers he may possess in canon 1045, the second marriage is invalid and must be revalidated *servatis servandis* like any other.

282.—Untrue Canonical Cause

A priest when applying for a dispensation from mixed religion gives "periculum matrimonii civilis" as the canonical cause. What should he do if he discovers, either before or after the marriage, that this alleged reason is certainly untrue?

Canon 1054: Dispensatio a minore impedimento concessa, nullo sive obreptionis sive subreptionis vitio irritatur, etsi unica causa finalis in precibus exposita falsa fuerit. (Mixed religion is not in the list of minor impediments in canon 1042, §2.)

Canon 1061, §1: Ecclesia super impedimento mixtae religionis non dispensat, nisi: i. urgeant iustae ac graves causae. . . .

(i) The question can be answered only by deciding whether mixed religion is a minor impediment, about which there is some dispute. Cf. De Smet, *De Matrimonio,* §464, 8, n. 4; Cappello, *De Matrimonio,* §206. It seems to us quite certain that it is not a minor impediment and is not therefore subject to the indulgent rule of canon 1054: firstly, because it is notin the list given in canon 1042, §2; secondly, because a grave cause is required for its dispensation. The distinction between major and minor impediments is based entirely on the difficulty of getting them dispensed, and the fact that mixed religion is merely a prohibiting impediment does not for that reason place it in the category of those which are minor: we all know that, in many dioceses, it is not at all easy to get a dispensation.

A further point, well summarized in *Jus Pontificium,* 1929, p. 238, is that the distinction between major and minor has no reference to the prohibiting impediments at all; mixed religion is neither major nor minor, and the rule, therefore, of canon 1054 is inapplicable. Thus in a decree, *S.C. Consist.,* 25 April, 1918, certain Ordinaries are given faculties to dispense specified major impediments, minor impediments and the prohibiting impediment of mixed religion.

(ii) If the error is detected before the marriage takes place, a fresh dispensation must be obtained, since the first was invalid; if afterwards, there can be no question of revalidating the marriage since it is already valid, but the married condition of the parties is unlawful and this can be rectified only by dispensation. Assuming that the guarantees are in order, it would suffice to inform the Ordinary of the circumstances, since a certain grave cause for dispensation now exists—marriage already contracted.

283.—Periculum Matrimonii Civilis

This is the canonical cause most frequently alleged by the priest applying for a dispensation. Is it verified when the priest considers that, in the circumstances, it would be a very grave hardship for the parties to abandon the marriage?

Propaganda, 9 May, 1877, n. 13; *Pontes,* n. 4890: *Periculum matrimonii civilis.* Ex dictis consequitur, probabile periculum quod illi, qui dis-

pensationem petunt, ea non obtenta, matrimonium dumtaxat *civile,* ut aiunt, celebraturi sint, esse legitimam dispensandi causam.

This document, which sets out sixteen causes, is the *locus classicus* on the subject. There is a further list of causes which are admitted in practice by the Holy See and may also, therefore, rightly be called "canonical".[1]

(i) It suffices if the danger of civil marriage is considered to be probable. The priest from his knowledge of the parties must be able truthfully to assert that this is so, and it is clearly not permitted him to construe every case of grave hardship, if the dispensation is refused, as being always equivalent to the danger of a civil marriage. All cases of refusal entail severe disappointment and resentment; if, in addition, it is judged that the parties will take a refusal so badly that they will probably get married in a register office, the canonical cause is verified. Otherwise it is not, and there must be many cases in which the danger is improbable, because the Catholic petitioner is a faithful and loyal member of the Church, who would never go to the length of contracting a civil marriage. In such cases one or more of the remaining canonical causes must be cited: "operae pretium erit imprimis animadvertere, unam aliquando causam seorsim acceptam insufficientem esse, sed alteri adiunctam sufficientem existimari: nam quae non prosunt singula, multa iuvant".[2]

(ii) Since the quinquennial faculties obtained from the Holy Sec leave it to the discretion of the Ordinary whether he will use them or not, one must know his requirements, and local legislation frequently makes more explicit the kind of cause which must be verified before a dispensation from mixed religion will be considered. It is true that this impediment is not diriment of marriage; on the other hand, the faith of the Catholic party or of the offspring is always endangered to some extent, though made more remote by the guarantees, and the multiplication of these unions is likely to result in a general religious laxity; therefore canonical causes which might suffice for other impediments, even diriment impediments, are not necessarily held to be adequate in the case of mixed religion.

284.—Angustia Loci

May "Angustia Loci" be urged as tbe sole canonical cause in a petition for a dispensation when tbe man whom the petitioner desires to marry is tiring outside of her district?

Propaganda, 9 May, 1877; *Fontes* n. 4890, ad 1: *Angustia loci* sive absoluta sive relativa (ratione tantum oratricis), cum scilicet in loco originis vel etiam domicilii cognatio feminae ita sit propagata, ut alium paris conditionis, cui nubat, invenire nequeat nisi consanguineum vel affinem, patriam vero deserere sit ei durum.

(i) It seems from the concluding words that, in a strict interpretation of the phrase, one of the conditions for this canonical cause is not verified in the circumstances of the above case; it would be verified, however, if *angustia loci* applies also to the place in which the man is living, in which case

1 Cf. Q. 288.
1 *Propaganda,* loc. cit»

it is more correctly styled *angustia locorum.* Thus Noldin, *Theol. Moralis,* III, §610: "Si locus sponsi idem est vel si alius est, sed pari modo angustus, id in libello indicari potest . . ." Cf. Payen, *De Matrimonio,* §740: "Altera conditio est ut oratrici durum sit patriam deserere. Itaque cessat causa ... si nequaquam durum sit feminae egredi e loco parentum, atque simul paris conditionis virum extraneum invenerit qui illam petierit."

(ii) But the list of causes summarized in the document of 1877, and which most commentators regard as the only ones which are "canonical", are often widely interpreted; in addition, other causes not catalogued therein arc accepted by the Holy See. Accordingly, there is nothing irregular in mentioning *angustia loci* as a cause, even though one or other of the circumstances set out in the above text are lacking. For example, it may be urged as a cause in seeking dispensation from an impediment other than relationship. The point is that the petition is for a favour, and the dispensing authority may decline to grant it even though all the conditions are verified. Since *angustia loci* is not among the graver causes, it is always advisable to add some others if they can be discovered.

285.—Dispensation Refused

There is a law invalidating the grant of a dispensation by one authority if it has already been refused by another. (/) Does not a change of circumstances in the petitioner s condition regularise the grant of a petition by a fkjoman Office which has already been refused by another ? Does not ignorance of the law create an exception to the usual rule? (77) Is the situation "mutatis mutandi's" the same in regard to a dispensation soughtfrom one Ordinary after its refusal by another ?

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Canon 43: Gratia ab una Sacra Congregatione vel Officio Romanae Curiae denegata, invalide ab alia Sacra Congregatione vel Officio aut a loci Ordinario, etsi potestatem habente, conceditur sine assensu Sacrae Congregationis vel Officii quocum vel quibuscum agi coeptum fuit, salvo iurc S. Poenitentiariae pro foro interno.

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Canon 44, §1: Nemo gratiam a proprio Ordinario denegatam ab alio Ordinario petat, nulla facta dencgationis mentione; facta autem mentione, Ordinarius gratiam non concedat, nisi habitis a priore Ordinario denegationis rationibus.

(i) The situation, as between two Congregations or Offices of the Holy See, can rarely arise in practice, since the competence of each is now very carefully determined. It could arise only through error or in cases of doubtful competence. Ignorance of the law, even invincible ignorance of a petitioner in good faith, does not affect the situation. This is clear from canon 16, §1: "Nulla ignorantia legum irritantium aut inhabilitantium ab eisdem excusat, nisi aliud expresse dicatur," and it is applied by the commentators to canon 43, e.g. Claeys-Bouuaert, *Jus Canonicum,* I, p. iij; "Regula c. 43 est absoluta: gratia sic obtenta est invalida, etiamsi nulla mala fides interveniat."

Nor does length of time, as such, affect the issue, though it could easily happen that, with the passage of time, an entirely different motive or final cause appears in support of the petition. This is an interesting development which most of the commentators do not explain, and a good example

of it occurs in applying canon 1043 (matrimonial dispensations by the Ordinary *in periculo mortis)* to a case which has previously been rejected by the Holy See. We agree with Van Hove that the circumstances of this canon create an exception to the rule of canon 43: "Tribuendo Ordinariis facultatem dispensandi etiam in iis impedimentis in quibus sola Sancta Sedes dispensare potest, immo in quibus non solet dispensare, derogatur, propter supremum bonum ainimarum, regulae de repulsa per Congregationem forte alio tempore et aliis in adiunctis facta."[1] The reason indicated is the change of circumstances of such a character as to constitute a new and different final cause or motive; a further reason, of course, is deduced from the well-known rules which concede the fullest possible jurisdiction *in periculo mortis.* But the difference of final motive, in our view, is the chief element to consider, and we can see no reason why the principle cannot be applied to other different final motives. Berutti, an unusually clear and satisfactory commentator, is the only author amongst those we have consulted who points this out: "Non iam de *eadem* gratia proprie ageretur si *nova causa motiva* adsit, qua rescriptum rationabiliter concedi possit; et idcirco prioris repulsae denuntiatio necessaria non esset si in casu gratia ab alio superiore competenti impetrari velit."[2] Canon 43, limiting the exercise of rights, must certainly be interpreted strictly, according to canon 19, and all the commentators so interpret it in dealing with some other contingencies not raised in the above question.

(ii) In the only really important respect the situation as between two Ordinaries (canon 44) is entirely different. The law prohibits the practice but not, as in canon 43, under pain of invalidity. Cf. e.g. Berutti, *op cit. ;* Van Hove, *op. cit.,* p. 161, and canon 11.

286.—Dispensation Ceasing

Five years ago the parties in a proposed mixed marriage obtained a dispensation. They afterwards disagreed and the marriage was broken off. Now the breach is healed and they have married before a civil registrar. In order to revalidate this marriage, is it necessary to obtain a fresh dispensation from the impediment of mixed religion ?

(i) The principle about the cessation of dispensations is contained in canon 86: "Dispensatio quae tractum habet successivum, cessat iisdem modis quibus privilegium, nec non certa ac totali cessatione causae motivae." Canon 76 states: "Per non usum vel per usum contrarium privilegia aliis haud onerosa non cessant. . . ." These canons refer not to a dispensation given absolutely and for use once, but to a dispensation, for example, from fasting owing to ill health, the use of which is recurrent. It ceases when the motive for its concession ceases, namely when the person is no longer in ill health. It does not cease by not being used.

Therefore, a dispensation from a marriage impediment granted absolutely does not cease to exist even though it is not used, and even though the motive for its concession is no longer present. The law on this matter has

[1] *De Rescriptis,* 1936, p. 159.
[2] *Institutiones luris Canonici,* I, p. 134.

not been changed by the Code, and many of the earlier authors held that a marriage dispensation could be used even though another marriage intervened: it could be used after the death of the other party in the first marriage.[1] The post-code authors give a similar interpretation, e.g. Vermccrsch-Creusen, *Epitome,* I, §205; Noldin, *Theol. Moralis,* I, §188; Clacys-Bouuaert, *Jus Canonicum,* I, §236. Iorio, *Theol. Moralis,* I, §118, states: "Dispensatio quae non habet tractum successivum, semel concessa, nunquam cessat, quamvis cessat motiva ob quam concessa est, etiam ante usum dispensationis. Ratio est quia quod conceditur absolute, nequit ulla susbequenti conditione infirmari. Effectus praeterea talis dispensationis est indivisibilis. Sic dispensatus super impedimento matrimoniali vel irregularitate, non iterum afficietur eodem impedimento vel irregularitate, eo quod forte matrimonium vel ordinatio non habuerit locum."

(ii) But it must be observed that these authors all speak of a dispensation conceded absolutely, as most matrimonial impediments would commonly be. There is this possibility, in applying the interpretation for impediments in general to a dispensation from mixed religion, namely that the grant may conceivably be given with the condition that the parties do not marry *coram lege civili* before marrying *coram ecclesia.* Canon 1063 forbids them to appear before a non-Catholic minister either before or after the marriage *coram ecclesia,* and Ordinaries are directed, in their quinquennial faculties, to warn the parties of this law. Van Hove, citing a dispensation form issued by the Holy Office, notes that the word "dummodo" is used: "Dummodo neque ante, neque post matrimonium coram parocho catholico initum partes adeant ministrum acatholicum."[2] From canon 39 the effect of this word is to make the acceptance of the condition essential for the validity of the rescript. It is quite possible, though we can find no example, that an Ordinary might see fit to issue a dispensation with a "dummodo" clause relating to civil marriage before the canonical rite. The doubt raised can be solved only by examining the terms of the original rescript of five years ago. If it contains no invalidating condition concerning civil marriage, the interpretation given for impediments in (i) above will apply equally to a dispensation from the impediment of mixed religion.

287.—Priest Dispensing Impediments

Ebe law relating to a priest's power of dispensing marriage impediments is difficult to understand and remember. Cotdd it be set out in theform ofa chart?

It must be remembered that the powers may be used only when the Ordinary cannot be reached; there is also considerable danger of coming into conflict with the civil law, if the parties are not already civilly married. Very few priests, accordingly, have ever used the faculties they possess, and it will usually be possible to get penitents in danger of death disposed for receiving the sacraments without rectifying their marriage status. In any case, a priest should be very sure of his ground before using these taculties in dispensing marriage impediments, and for this purpose a

[1] Ojcttl, *Sjnofuis Rerum Moralium,* col. 1608; D'Annibale, *Tbeol. Moratis,* I, §23j.
[2] *De Reseribits,* p. 12j.

thorough acquaintance with the terms of canons 1043, 1044, 1045, 1046 is required, and it is a necessary preliminary for the right understanding of the following chart:

	Form of Marriage (2)	*Public* (3) *Impedi-ments* (4)	*Occult (f) Impedi-ments* (4)	*Validfor External Forum* (5)
A. DANGER OF DEATH (1): Canons 1043, 1044.				
Parochus (6) or Delegate (7)	Yes	Yes	Yes	Yes
Undelegatcd Priest (8) Canon 1098.	Yes	Yes	Yes	Yes
Confessor (9)	Yes	Yes (10)	Yes	No
B. URGENT CASES (1): Canon 1045.				
Parochus (6) or Delegate (7)	No (11)	No	Yes	Yes
Undelegated Priest (8) Canon 1098.	No (11)	No	Yes	Yes
Confessor (9)	No (11)	No	Yes	No

Explanatory Notes

(1) A priest's powers, when the Ordinary cannot be reached, are limited to cases *in periculo mortis* and to the two urgent cases of canon 1045. Cf. *The Clergy Review,* XX, 1941, p. 77; *Periodica,* 1931, p. 28; *Apollinaris,* 1928,9.245.

The Ordinary has wider powers in cases of urgency from canon 81. Cf. *Code Commission,* 27 July, 1942.

(2) Dispensing from the form of marriage (canon 1094) means dispensing from the presence of parish priest, or his equivalent, and two witnesses

(3) The distinction between a public and an occult impediment, from canon 1037, turns on whether it is provable in the external forum or not, a notion confirmed by the *Code Commission,* 25 June, 1932, ruling that an impediment is public if the fact from which it arises is public.

But canon 1045, §3, deals with occult "cases", and does not use the term "occult impediment". The *Code Commission,* 28 December, 1927, decided accordingly that the faculty may be used for dispensing impediments which are *de facto* occult even though they are public by nature.

Cf. Cappello, *De Matrimonio,* §237, 2, d.; *Jus Pontificium,* 1928, p. 36; *Irish Ecclesiastical Record,* March 1942, p. 270; Gougnard, *De Matrimonio,* p. 586.

Notwithstanding the Code Commission replies, there is still considerable doubt as to the meaning of "public" and "occult" in certain contingencies, and canon 209 must be used.

(4) Impediments of divine or natural law may never, of course, be dispensed by any human authority. All impediments of ecclesiastical law may be dispensed except the priesthood and affinity in the direct line arising from a consummated marriage. If mixed religion is dispensed, the guarantees must be obtained even *in periculo mortis.* Cf. Q. 296.

(5) Dispensations granted by a confessor in the sacrament of Penance have no validity whatever in the external forum, since the details cannot be recorded in any register. In all other cases the Ordinary must be informed, and the fact of a dispensation being granted must be entered either in the ordinary register (canon 1046) or in the special register for the internal non-sacramental forum (canon 1047).

(6) By "parochus" is meant all the persons mentioned in canon 451, §2.

(7) It may be taken as probable that priests with delegated faculties for marriages, e.g. the assistant priests of a parish, are also included in the term "parochus" for the purpose of dispensing impediments. Cf. Q. 290. If one prefers not to act on this probability, such priests may function only as confessors, or as the assisting priest of canon 1098 with the limitations attached.

(8) The priest referred to is any priest whatever who is present at a marriage contracted before witnesses alone, as explained in canon 1098. If the conditions for the exercise of his powers are not verified, he may function only as a confessor.

(9) As confessor the priest's powers are limited to the internal forum of Penance. In given circumstances, however, a confessor automatically becomes the priest of canon 1098.

(10) It is disputed whether *in periculo mortis* a confessor may dispense from a public impediment; cf. *Apollinaris,* 1928, p. 64; Cappello, *De Matrimonio,* §238; *Jus Pontificium,* 1928, p. 64; 1929, p. 62. In our view he can, since it is possible to have a public impediment dispensed for the internal forum alone, as in canon 1031, §2.2. It is for the penitent to regulate the matter for the external forum when the danger of death ceases.

(11) The priest's power of dispensing the form outside of danger of death is much in dispute. Cf. *Apollinaris,* 1928, p. 524; *Jus Pontificium,* 1927, p. 87. In our view he certainly cannot dispense if the lack of form is publicly known; cf. 1045, §3, "in casibus occultis". Even if the case is occult, we think it only slightly probable that this power is enjoyed; for unlike canon 1043, canon 1045 makes no mention of the form.

288.—"Omnia Parata" a Cause

A canonical cause is required for a dispensation from any marriage impediment. In the circumstances of canon 1045 may one hold that "omnia parata, etc", alone suffices as a canonical cause?

Propaganda, 9 May, 1877; *Forties,* n. 4890: . . . facile quis intclligir, tanto graviorem causam requiri, quanto gravius est impedimentum. Idcirco opportunum visum est in praesenti Instructione paucis perstringere praecipuas illas causas . . . opere pretium erit imprimis animadvertere, unam aliquando causam seorsim acceptam insufficientem esse, sed alteri adiunctam sufficientem existimari. . . . There follows in this document the sixteen causes which all the manuals give as canonical. But from the use of the word "praecipuas", and from the general tenor of the instruction, it is evident that the list is not absolutely complete. Λ second list of causes was published by the *Dataria* in 19011 of which some extend or modify the list of 1877; others are not in the former list and used to be included under the general formula "ex certis et rationabilibus causis". In η. 8 of this second list published in 1901 stands: "si omnia iam parata sunt ad nuptias".

There results from this double list a certain confusion in the use of the term "canonical cause". Some call the first list alone canonical and the second non-canonical;2 others regard the causes in both lists as canonical;3 others think that some in the second list are to be called canonical others non-canonical.1 Our view is that if the cause is just and reasonable, and the Holy See is accustomed to grant dispensations when such cause exists, it should be called canonical even though it does not appear in the first list.5

It seems clear to us, therefore, that "omnia parata, etc.", is a canonical cause, though this docs not mean that it suffices for dispensing any impediment. Canon 84, §1 : "A lege ecclesiastica ne dispensetur sine iusta et rationabili causa, habita ratione gravitatis legis a qua dispensatur; alias dispensatio ab inferiore data illicita et invalida est." The third degree of *crimen,* for example, is rarely dispensed and requires the gravest cause, which "omnia parata, etc.", taken by itself is not. The dispensing authority, however, is presumed to know for what reasons the Holy See is accustomed to dispense from certain impediments, and it may be held, as a general rule, that the invalidity of a dispensation on the score of an insufficient cause will only arise when the cause alleged in a petition is false.

This intricate point does not strictly come within the above question. Let us assume that the impediment which is being dispensed under canon 1045 is a minor impediment (canons 1042, 1054). "Omnia parata, etc.", alone certainly suffices as a cause for dispensation. It could properly be used when applying to an Ordinary for a dispensation to be granted, cither from his own quinquennial faculties, or from canon 81, or from canon 1045, §1. If there is no time for recourse to the Ordinary, this cause could certainly be accepted by a priest using the dispensing powers of canon 1045, §3; in his case "omnia parata, etc.", is not only the canonical cause but also a necessary condition for the valid use of his dispensing powers.

› XXXIV, p. 34.
1 Gasparri, *De Matrimonio,* §31.
8 De Sinct, *De Matrimonio** §826.
4 Cappello, *D: Matrimonio,* §268.2.
1 Cf. Ô'.R. *Rotae Decisiones,* XV11I, p. 167,

289.—Meaning of "Omnia Parata"

Does the étatisé "omnia parata, etc?', mean that the priest may use his powers of dispensation only when the impediment is discovered after the parties have arrived in the church? Also, may he dispense under this canon when he hasforgotten to apply to the Ordinary?

Canon 1045, §5: In iisdem rerum adiunctis (i.e. quoties impedimentum detegatur, cum iam omnia sunt parata ad nuptias, nec matrimonium, sine gravis mali periculo differri possit usque dum . . . dispensatio obtineatur) eadem facultate gaudeant omnes de quibus in can. 1044 (i.e. tum parochus, tum sacerdos qui matrimonio ad normam can. 1098, n. 2, assistit, tum confessarius, sed hic pro foro interno in actu sacramentalis confessionis tantum) sed solum pro casibus occultis in quibus ne loci quidem Ordinarius adiri possit, vel nonnisi cum periculo violationis secreti.

(i) We assume that all the other conditions are verified for the valid and lawful grant of a dispensation by a priest, as formulated in canons 1045-1047 and in the decisions given on dubious points by the *Code Commission.* It is a vast subject, as a matter of fact, and most of us, even if we know these canons by heart, hope that the occasion for applying them may never come our way.·

The kind of urgency which arises when an impediment is not discovered until everything is ready for the marriage is verified when the discovery takes place after the parties have arrived at the church, but it is not restricted to these circumstances. All cases are included in which there is danger, even a probable danger, of people suffering grave injury through postponing an arranged marriage for the time required in seeking a dispensation through the usual channels. The usual way of obtaining dispensations from the Ordinary is by letter, not by telephone or telegram, nor by attending personally upon the Ordinary. Priests may use these extraordinary methods, if it can be done without endangering a person's good name, and most priests would prefer to do so, particularly if they are not feeling too sure about their knowledge of the law in these canons; but there is no obligation. Normally a transaction by letter within a diocese takes about two days, but it might take a week or more under war conditions.

The law is explained in a Rota judgement of 25 May, 1925,1 in which the parties unsuccessfully sought a decree of nullity on the grounds that a dispensation from affinity was invalidly given by the Ordinary; its application to a dispensation given by a priest in similar circumstances is evident. "Verba autem 'cum omnia parata sunt ad nuptias' bifariam intclligi possunt; vel coarctantur nimirum ad nuptias *hic et nunc,* paucas post horas, celebrandas, et hic sensus nullam latitudinem intervalli moraliter patitur; vel dilatantur ad nuptias *post aliquod intervallum temporis* celebrandas, v.g. post duos, post viginti dies, quod utique variari potest pro circumstantiis. Sed ex contextu liquet intervallum non fixum esse debere sed variabile in casu; nam celebrandae nuptiae supponuntur absque possibilitate adeundi S. Sedem pro dispensatione obtinenda, quae possibilitas exclusis telcgrapho et telcphono diversimode profecto dimetienda est pro finitimis Urbi et pro dissitis

1 *Duisionu,* XVII, p. 199, *coram* Manucci.

Orbis plagis; quin etiam ex §3 eiusdem canonis possibilitas longe diverse dimetienda opponitur iisdem verbis 'cum omnia parata sunt ad nuptias' nempe adeundi Ordinarium. Fieri itaque non potest quod in novo iure locutio illa servet univocum inflexibilemque valorem quem habet in sacris Litteris (Matt, xxii, 4). . . . Quod denique spectat *probabile* periculum gravis mali cum dilatatione coniuncti, res, ut patet, remittitur aestimanda arbitrio Ordinarii, dummodo ratione regatur, quod praesumitur. Non sufficit quidem mera possibilitas, sed nec requiritur certitudo futuri periculi; agitur enim dc sola praevisionc, nam probabile dicitur periculum si iuxta humanam praevisionem imminere timetur."

The law, therefore, is not to be restricted to the case where the wedding party has arrived at the church, and cannot be dismissed without causing grave vexation to everyone. It includes other contingencies occurring on the eve of the marriage.

(ii) The faculties conceded by the common law may be used only in occult cases, when the Ordinary cannot be reached, and if an impediment is discovered when everything is ready for a marriage which cannot be delayed without grave harm. The definition of what is meant by occult in this connexion is a well-known difficulty, but it does not come within the terms of this question. Assuming that it is an impediment which can be dispensed in these circumstances, the doubt arises from the clause: "in quibus (casibus) ne loci quidem Ordinarius adiri possit", since the Ordinary could have been reached except for the negligence of the priest.

We think that the faculties can be used, for they arc meant to be applied in every case of grave and urgent necessity occurring when everything is ready for a marriage. All the priest need do is to decide whether he would use these faculties if the impediment had only just come to his notice, irrespective of the fact that the urgency is due to his own forgetfulness. This is the solution given in *Periodica,* 1953, p. 43, and even if it appears to be somewhat doubtful, canon 209 can be used for the necessary jurisdiction.

290.—Canon 1043: Qualified Priest

A parish priest may, in certain contingencies, dispense from occult impediments, when there is not time to have recourse to the Ordinary. Is it a correct interpretation of the law that not only the parish priest may dispense, as canon 1045, §3, compared *with canon 1044 expressly states, but also the curate or any priest who enjoys delegation for marriages ?*

Canon 1045, §3, declaring that in certain contingencies an occult impediment may be dispensed when it is not discovered until everything is prepared for marriage, states that the power of dispensing is enjoyed by the persons mentioned in canon 1044, namely, (λ) the parish priest; (Q the priest who may be present at marriages contracted before two witnesses according to the law of canon 1098, n. 2; (r) the confessor for the internal sacramental forum only. The question raised by our correspondent is whether in category *(a)* is included not only the parish priest but any priest who is validly and lawfully delegated to assist at marriages.

From canon 1044 any priest may dispense *qua* confessor, for the internal forum only and in the act of sacramental confession. It must also be said

that any delegated priest would act wisely in referring the matter to the parochus if he can easily be reached, before using the powers contained in canon 1045, §3, since it is a matter of unusual complexity and involves a correct registration of the dispensation conceded. A further reason why he should, if possible, refer the case to the parish priest is that a certain answer to the above question cannot be given. It is a *dubhrm iuris,* and the prudent solution is to secure the dispensation from one who can give it with certainty.

Some canonists arc of the opinion that a priest delegated for marriages is not included under the designation "parochus" in this canon, unless the dispensing power is also delegated. Thus, De Becker: "Cum parochus ordinariam habeat potestatem, eam delegare valet suis vice-parochis. At plane est abstinendum ab absurda et singulari opinione quod parochus delegans suum vicarium pro assistendo matrimonio, eo ipso censeatur ei concessisse potestatem dispensandi in casibus quibus potest."[1] Wernz-Vidal also inclines to this view;[2] likewise Vermeersch-Crcuscn.[3]

When a canonist describes the view he is rejecting as "absurd", one hesitates to give any support to the absurdity. Nevertheless, we agree with those who concede to any priest validly assisting at a marriage the powers of dispensation which the canons expressly grant to a parish priest. The reasons for this view arc concisely expressed by Chelodi: "Quid vero de sacerdote e.g. de vicario cooperatore ad assistendum matrimonio legitime delegato? Sunt qui tenent eum potestate dispensandi esse destitutum nisi parochus eam ipsi delegaverit. Alii censent applicandum in tali casu Can. 200, §1, ita ut delegatio ad assistendum sccum ferat potestatem dispensandi. Alii tandem putant nomine parochi venire etiam sacerdotem delegatum cum Codex omnes enumerare debeat sacerdotes qui hic intervenire possunt. Et recte quidem cum secus sacerdos ad assistendum delegatus minore facultate polleret quam quilibet sacerdos matrimonio mere assistens ad normam Can. 1098 n.2."[4] This is also the opinion of authorities such as De Smet, *Praxis Matrimonialis,* 1959, n. 29; and Cappello, *De Matrimonio,* 1939, n. 237 e.

It might well happen that, if the point is ever decided by the *Code Commission,* the solution will be that, just as an Ordinary may dispense when the Holy See cannot be reached, and a parish priest when the Ordinary cannot be reached, so likewise a delegated priest may use the powers of canon 1045 only when the parish priest cannot be consulted. This is what we have suggested, as a measure of prudence, above; but it is not the law, and most of the writers who incline to the stricter view admit that the opposite opinion is solidly probable.

§4. MIXED MARRIAGES

291.—Disparut of Worship: Non-Catholics

A child, born of a mixed marriage, is baptised in the Catholic Church but educatedfrom infancy in a Nonconformist sect. Is the marriage which he contracts with an tmhaptigedperson in a register office a valid marriage?

1 *De Matrimonio.* p. 175.
1 *Jus Canonicum.* V, §425» n. 90.
3 *Epitome.* II, §311.
4 *Ins Matrimoniale.* n. 44.

Canon 1070, §1: Nullum est matrimonium contractum a persona non baptizata cum persona baptizata in Ecclesia catholica vel ad eandem ex heresi aut schismate conversa.

Canon 1099, §1: Ad statutam superius normam servandam tenetur: i. Omnes in catholica Ecclesia baptizati et ad eam ex haeresi aut schismate conversi, licet sive hi sive illi ab eadem postea defecerint, quoties inter se matrimonium ineunt. 2. iidem, de quibus supra, si cum acatholicis sive baptizatis sive non-baptizatis . . . contrahant.

§2. Firmo autem praescripto, §r, n. 1, acatholici sive baptizati sive non baptizati, si inter se contrahant, nullibi tenentur ad catholicam matrimonii formam servandam; item ab acatholicis nati, etsi in Ecclesia catholica baptizati, qui ab infantili aetate in haeresi vel schismate aut infidelitate vel sine ulla religione adoleverunt, quoties cum parte acatholica contraxerint.

Code Commission, 29 April, 1940, ad II: An ab acatholicis nati, de quibus in canone 1099, §2, ad normam canonis 1070 subiieiantur impedimento disparitatis cultus, quoties cum parte non baptizata contraxerint? *Resp.* Affirmative.

(i) All baptized persons, unless expressly exempted, are in principle subject to the laws of the Church, including therefore the diriment impediments which are *inn's ecclesiastici,* and also other matrimonial laws. There is no doubt whatever about this principle. It is implied in such canons as 12, 87, 1058, §2, and in the two canons quoted above which do expressly exclude baptized heretics from the impediment of disparity of worship and from the form of marriage

(ii) The validity of the marriage, in the above case, is assailable on two separate grounds: that the form was not observed and that the diriment impediment of disparity of worship was not dispensed. With regard to the form, the *Code Commission* decided, 20 July, 1929, that the phrase *ab acatholicis nati* in canon 1099, §2, includes those persons born of parents of whom one only is a non-Catholic, even in cases where the usual guarantees required in mixed marriages have been given.1 Therefore, the person in this case is not bound to the form of marriage, and could be validly married in a register office if not prevented by some diriment impediment.

(iii) With regard to the impediment of disparity of worship it was held by many canonists that the phrase *persona baptizata in Ecclesia catholica* of canon 1070, §1, was subject to the same interpretation as that contained in canon 1099, §2, namely that the impediment does not affect persons born of non-Catholics and educated from infancy in heresy, even though they were technically Catholics owing to their being baptized as such.

Others were of the opposite opinion—namely that for the purpose of observing the form of marriage they are to be regarded as non-Catholics, but as regards the impediment of disparity of worship, from which baptized non-Catholics arc exempted, they arc to be regarded as Catholics. This stricter view is the one now adopted by the *Code Commission.* It is in harmony with a private reply of the *Holy Office,* 1 April, 1922, a ruling which caused some difficulty for those who held the former and more liberal view. Cf. Q. 292.

1 *A.A.J.,* XXI. 1929, p. 57j.

292.—In Ecclesia Catholica Baptizata

A person in 1920 *was baptised privately by a Catholic nurse in infancy, Hath parents are non-Catholies and the child was educated as a non-Catholic. Is this person bound by the impediment of disparity of worship ?*

Canon 1070, §1: Nullum est matrimonium contractum a persona non baptizata cum persona baptizata in Ecclesia Catholica vel ad eandem ex haercsi aut schismate conversa.

Code Commission, 29 April, 1940, ad II: An ab acatholicis nati, de quibus in canone 1099, §2, ad normam canonis 1070 subiieiantur impedimento disparitatis cultus, quoties cum parte non baptizata contraxerint ? *Resp.* Affirmative.

Propaganda, 1 April, 1922 (private): Quidam vir, nomine Thac, anno 1898 ex parentibus infidelibus natus, in infantili aetate a medico quodam catholico, periculo mortis imminente, insciis parentibus baptizatus, postea in infidelitate omnino educatus, matrimonium more patrio contraxit, circa finem anni 1918, cum puella, pagana, cui nomen Nam. . . .

S.C. respondit: Amplitudini tuae communico S. Congregationem S. Officii examinasse casum matrimonialem Thac-Nam istius Vicariatus, et respondisse matrimonium hoc Thac-Nam a te declarandum esse nullum, ob impedimentum disparitatis cultus. (Text in Sabetti-Barrett, *Theol. Moralis,* p. 1158.)

It is now quite certain from the *Code Commission* reply, 29 April, 1940, that the exception of canon 1099, §2, which releases from the observance of the form a person baptized a Catholic but educated in heresy, does not apply to the impediment of difference of worship. Cf. Q. 291.

But there is still some obscurity concerning the phrase "baptized in the Catholic Church". The view is fairly common that, in the circumstances of the above case, the offspring of non-Catholic parents, baptized privately by a Catholic in an emergency, or against the law of canons 750 and 751, is not to be considered a Catholic for the purposes of the law of canon 1070, §1 ; such a person is not, therefore, bound by the impediment of difference of worship since the promulgation of the Code, 19 May, 1918. Against this view stands the reply of the *Idoly Office* given through *Propaganda,* 1 April, 1922, which clearly asserts that such a person is bound by the impediment. Even though this reply has not been promulgated, it has found its way into the books, and some of the writers who are aware of it have modified their teaching on the subject. Cf. Gougnard, *De Matrimonio,* p. 468. The reply, being private, has not obtained the force of law (canons 17, §3, and 49), and we think with Cappello, *Periodica,* 1931, p. 76, that the impediment in such a case is at least doubtful and, therefore, in practice to be considered non-existent (canon 15). The correct procedure would be to seek a dispensation *ad cautelam.*

293.—Marriage and Doubtful Baptism

Hertha, a reputed Catholic, married Pitins, a Protestant, in a Nonconformist chapel. But there is a positive doubt about Hertha's baptism. If she is not baptised

the marriage would be valid, since Titius is not held by disparity of worship and neither party is bound to tbe Ne Temere form. If she is baptised the marriage is invalid from defect of form. On the Ordinary s direction Hertha is re-baptivyd conditionally. Is it necessary to revalidate the marriage ?

The solution, in our opinion, will depend on the date of the marriage, whether it was before the promulgation of the Code or after, since the Code has introduced a new presumption for deciding marriages contracted with doubtful baptism.

(i) Assuming it was contracted after 19 May, 1918, the date when the Code came into force, the doubt is to be solved from canon 1070, §2: "Si pars tempore contracti matrimonii tanquam baptizata communiter habebatur aut eius baptismus erat dubius, standum est, ad normam can. 1014, pro valore matrimonii, donec certo probetur alteram partem baptizatam esse, alteram vero non-baptizatam." The prc-Code presumption reckoned a doubtful baptism valid in relation to marriage, but this canon simply declares a presumption in favour of the marriage. Owing to this new presumption, Bertha's doubtful baptism is reckoned to be invalid in order to favour the validity of the marriage.[1] As Bertha is presumed to be unbaptized and Titius is a non-Catholic, the marriage is valid: fora baptized non-Catholic is not held, since the Code, by the impediment of disparity of worship, and the *Ne Temere* form is not necessary. If it is objected that the presumption of canon 1070, §2, refers to the previous §1 and not to the *Ne Temere* form, the answer is that, even so, the validity of the marriage is established by the general presumption of canon 1014, as many authors expressly note, e.g.: "Quoad dubie baptizatos applicandum est praescriptum can. 1014, scii, matrimonium sine forma iuridica celebratum a parte dubie baptizata cum parte infideli vel dubie baptizata aut cum parte acatholica vcl catholica orientali, habendum est ut validum."[2] "Quoad spectat dubie baptizatos: cum, juxta can. 1014, in dubio standum sit valori matrimonii, donec contrarium probetur, validum videtur habendum matrimonium sine forma praescripta celebratum a parte dubie baptizata cum parte, etc."[3]

We think therefore that, from canon 1070, §2, it is not necessary to revalidate such a marriage until the defect is certainly proved. Gasparri, *De Matrimonio,* §584: "Demum ex dictis facile intelligitur quid agendum, si, contracto matrimonio, quaestio enascatur circa baptismum partis catholicae ... si de baptismi validitate dubitatur, matrimonium possidet, sed pars est quamprimum baptizanda sub conditione, quin ncccsse sit consensum renovare aut sanationem in radice obtinere." The necessity of baptism is *iure divino,* but the impediment is *iure ecclesiastico* and is to be interpreted according to ecclesiastical law. For the relief of conscience, in the case of a scrupulously minded person, the marriage could be revalidated conditionally *ad cautelam.* This course is not, I think, to be recommended: it is not the practice to re-marry converts conditionally, unless their previous marriage is invalid.

(ii) But, if we assume that the marriage was contracted before 19 May, 1918, it is practically certain that the decision would have to be against the validity of the marriage. It has been for a long time a matter of dispute

1 Cf. *Periodica,* 1929, p. 157.
1 Cappello, *Dt Matrimonio,* §700.
1 De Smet, *De Matrimonio,* I, §140.

whether a pre-Code marriage cause of this kind, upon which a decision is sought after the Code, is to be judged by the new presumption of canon 1070, §2, or by the older presumption which was in force when the marriage was contracted, namely: "baptismus dubius, in ordine ad validitatem matrimonii, censendus est validus". The latter view has seemed to many to be the most likely, on the principle of Canon 10: "leges respiciunt futura non praeterita". This view is now strengthened by a decision of the *Holy Office,* 15 May, 1936,[1] which decided the following case. An unbaptized man married a baptized non-Catholic in 1900; was later civilly divorced; was baptized and received into the Church in 1908 and now desired to marry a Catholic. The baptism of his first wife was doubtful and his petition to the Holy See prayed for the dissolution of the natural bond of the first marriage *infavoremfidei.* Instead, the *Holy Office* declared that the first marriage was invalid owing to the impediment of disparity of worship. It seems, therefore, the mind of the Holy See that the presumption of canon 1070, §2, is not to be applied to a marriage contracted before the Code.

294.—Disparity of Worship: Guarantees

A dispensation from this impediment was granted by a superior with delegated powers, bitt owing to an error the guarantees were not obtained, and it is quite certain that the ttnbaptiered party will not make good this defect. Is the marriage invalid? If so, may the parties be left in goodfaith ?

It is certain that obtaining the guarantees is a necessary condition for the validity of the dispensation. This is deduced from the strictness of the law in canons 1060, 1071, and from the terms of the faculties used by delegates of the Apostolic Sec; the clause requiring guarantees is introduced by the word "dummodo", the force of which is clearly explained in canon 38: "Conditiones in rescriptis tunc tantum essentiales pro eorundem validitate censentur, cum per particulas *si, dummodo,* vel aliam eiusdem significationis exprimuntur."

Accordingly, the *Holy Office,* 21 June, 1912, gave the following reply: "Utrum dispensatio super impedimento disparitatis cultus, ab habente a S. Sede potestatem, non requisitis vel denegatis praescriptis cautionibus impertita, valida habenda sit an non ? *I^esp.* Dispensationem prout exponitur impertitam esse nullam."[2]

A similar reply, given on 2 August, 1932, to the Chinese Apostolic delegate[3] concludes by pointing out that, in such cases of invalid marriage owing to the lack of any guarantee, three courses are open to an ecclesiastical authority: revalidation of the marriage, declaration of its nullity according to the procedure of canon 1990, or leaving the parties in good faith.

The third course provides a good example of the principle concerning the lawfulness of leaving persons in good faith about actions which are merely material sins: there is no practical possibility of securing observance of the law, and there is no scandal since the parties and the public in general think that the marriage is valid, a dispensation having been obtained.

[1] *Periodica,* 1936, p. 154.
[2] *Fontes,* n. 1293.

295.—Guarantees: Certainty

What is the minimum required for the morn! certitude of canon 1061, §1.3? *Does this certitude have to extend to the case where, after the death of the Catholic party, the children are left in the care of the non-Catbolic party? If the majority of clergy of a particular diocese are accustomed to give little attention to establishing this moral certainty, would all the priests of that diocese bejustified in following this custom ?*

Canon 1061, §1.3: Ecclesia super impedimento mixtae religionis non dispensat, nisi. . . . Moralis habeatur certitudo de cautionum implemento.

(i) Since the decision that there is moral certitude is a judgement of the mind, prudently made after reviewing all the circumstances, it is not capable of very exact definition. Ter Haar, *De Matrimoniis Mixtis,* p. 60 seq., discusses fully the nature of this moral certainty, and his conclusion may be taken as safely representing the minimum required: "Profecto non requiritur de futuro cautionum implemento certitudo moralis *stricte dicta* seu *perfecta,* quae est assensus firmus uni parti contradictionis praestitus sine formidine partis oppositae: hanc quippe certitudinem in nostra materia acquiri semper impossibile est. Sufficit autem et requiritur *certitudo moralis late dicta* seu *imperfecta,* quae scilicet prudentem quidem erroris formidinem admittit, sed dubium positivum, grave ac prudens excludit." It will be found, we think, that this description is in accord with the instructions of the Holy See, and of local Ordinaries, on the subject.

(ii) The judgement is made relying on the data obtainable at the moment, especially on the guarantees. It seems to us that to require this certitude to cover possible hypothetical situations in the future would be to make it what Ter Haar calls "certitudo moralis stricte dicta seu perfecta". The non-Catholic has given a solemn promise, generally in writing, guaranteeing the requirements of canon 1061, §1.2, and this promise covers the case where, after the death of the Catholic party, the children are left in the care of the non-Catholic. It is not necessary to exact an express guarantee covering this contingency, unless the local Ordinary requires it, or unless the priest has grounds for suspecting that the guarantee is thus limited in the mind of the person who gives it. The Ordinary may, if he sees fit, add to the requirements of the common law before granting a dispensation, since it is left to his conscience to grant or withhold it; and, if the priest has grounds for suspecting a defective guarantee, he must correct it by obtaining a more detailed and explicit undertaking, exactly as he is instructed to do when investigating a marriage, if he has grounds for suspecting a defective marriage consent. Cf. T. *C. Sacram.,* 29 June, 1941, n. 9.

(iii) It is the right and the duty of ever}' priest who forwards a petition for a dispensation to observe both the common law and the directions of the local Ordinary, and he is not justified in following any custom to the contrary. We suspect, however, that the questioner is himself, perhaps, too strict, and that the majority of the diocesan clergy are acting correctly.

296.—Guarantees in Danger of Death

From canons 1043, 1044, 1045, *ample powers are given to priests for dispensing from matrimonial impediments "inpericulo mortis". In the case of mixed religion and disparity of worship the law requires the usual guarantees to be given before a dispensation is granted. What is to be done if the non-Catholic party refuses to give these guarantees? A "sanatio in radice" could be obtained in ordinary circumstances, but the use of the powers conceded by canons* 1045 *and* 1044 *supposes that there is no time to have recourse to the Ordinary. May the priest validly and lawfully dispense without obtaining the guarantees?*

To appreciate the detail raised in this query it is necessary to examine the background on which it is placed. From canons 1043 and 1044 Ordinaries may sometimes grant dispensations both from the form of marriage (priest and two witnesses), and from any ecclesiastical impediment, whether public or occult, except the priesthood and affinity in the direct line arising from a consummated marriage; when a dispensation is granted from disparity of worship or mixed religion the usual guarantees must be exacted. If the Ordinary cannot be reached, this dispensing power may be used by any priest who is competent to witness marriages and also, but only for the internal sacramental forum, by a confessor. In order to eliminate difficulties which do not directly bear on the terms of the question, we will suppose that the priest in the case is competent for marriages, i.e. he is the parish priest or possesses delegated powers. The situation is that he enjoys *ad hoc* exactly the same powers as the Ordinary in granting dispensations, and the limits of his jurisdiction will, therefore, be ascertained by discovering what are the limits of the Ordinary's jurisdiction.

It is hardly necessary to remark that the requirement about guarantees finds a place in this canon because the powers conceded are restricted to purely ecclesiastical impediments, whereas the impediments of disparity of worship and mixed religion, unless the danger of perversion is removed,

may be granted unless the danger of perversion is made remote; *iure ecclesiastico* no dispensation may be granted unless the guarantees of canon 1061 are given. "Igitur dispensatio semper et necessario supponit atque exigit ut praevie sublata fuerit prohibitio juris divini, quatenus proximum perversionis periculum partis catholicae cessaverit simulque cautum sit catholicae educationi universae sobolis. Praedictae conditiones jure ipso divino requisitae *in tuto* poni debent. Id autem fit per *cautiones,* quas vocant, legitima forma praestandas, ut inde moralis certitudo habeatur conditiones essentiales ad exccutionem demandatum iri. Nonnulli confundunt seu promiscue usurpant *conditiones* et *cautiones.* Sed, proprie et accurate loquendo, istae ab illis probe distinguuntur, Nam *conditiones* sunt *juris divini,* dum c contra *cautiones* sunt juris ecclesiasticae, et dici possunt media sive assccurationes, quibus in tuto ponitur earundem conditionum implementum."[1]

A decree of the *Holy Office,* 13 January, 1932, seems to leave no loophole whatever: "Emi ac Rcvmi Dni Cardinales . . . strictu sui muneris esse duxerunt, omnium Sacrorum Antistitum nccnon parochorum aliorumque,

[1] Cappello, *Periodica,* 1932, p. 102.

de quibus in canone 1044, qui super mixtae religionis ac disparis cultus impedimenti facultate aucti sunt, attentionem excitare et conscientiam convenire, ne dispensationes huiusmodi unquam impertiantur, nisi praestitis antea a nupturientibus cautionibus . . . secus ipsa dispensatio sit prorsus nulla et invalida." In commenting upon this decree Cappello[*] underlines its conclusions: "Dispensatio concessa, sine cautionibus antea praestitis a nupturientibus 'prorsus nulla et invalida declaratur'. Ex dictis id valet de dispensatione quovis in casu et a quocunque data, sive *extra* sive *in periculo mortis,* sive *mala* sive *bona fide* impertita."

Nevertheless, the same writer in the current edition of his treatise *De Matrimonio* appears to modify this judgement to some slight extent: "*In periculo mortis,* item invalida dicenda est, attento praesertim Decreto S.Officii 13 Jan., 1932, nisi forte verificentur peculiaria adiuncta de quibus supra. . . ." The reference is to the following exception: "Si pars catholica sit bene disposita et serio spondeat se conditiones servaturam, licet pars acatholica illarum adimplcmentum promittere renuat, putamus posse dispensari in casu urgentissimae necessitatis, ex. gr. in periculo mortis, si aliter quam per matrimonii celebrationem, conscientiae aut forte etiam prolis legitimationi consuli nequeat, dummodo, quod absolute requiritur, remotum factum fuerit perversionis periculum."[2]

There appears to be a contradiction between these two judgements, and they can be harmonized only by bearing in mind the distinction between the conditions *inre divino* and the guarantees *inre ecclesiastico.* Provided the priest assisting at a death-bed marriage is satisfied that the danger of perversion is removed, he may grant a dispensation even though the non-Catholic party refuses to give the guarantees required by ecclesiastical law. The use of the word "cautiones" in the decree of the *Holy Office* is a serious objection to this solution of Cappello, and some other commentators upon the document do not make any exception or reservafion. "Imo decreti vis ad id pariter protenditur quod scilicet, etiam in periculo mortis, dispensatio ipsa sit prorsus nulla et invalida si quando vel cautiones non praestantur (secus ac quidam mitius opinati erant) vel speciales illi modi seu formae negligantur sine quibus fidelem cautionum exeeutionem aliquis valeat praepedire. Namque verba decreti efferentia nullitatcm earum dispensationum, plane generalia ideoque tangunt omnes et singulos, ad quos fertur decretum ipsum."[3]

In our opinion, it is open to any priest to adopt the solution given by Cappello, who is one of the most authoritative writers on the difficulty. It is true that the document speaks of "cautiones". But, as Ter Haar notes, the distinction between "condition" and "guarantee" is often not observed, even in papal documents: "The condition is the removal of the danger of perversion from the Catholic party, and also from the offspring by a Catholic baptism and education. The guarantee is the formal and public pTomise made to the Church before the Marriage, that the condition will be fulfilled. . . . The Church can never dispense from the conditions, which must be fulfilled because they arc imposed by the divine law."[4]

It is reasonable, moreover, to suppose that the Church does not demand

[1] *Periodica,* 1952, p. 102.
[1] Ed. 1939. §§312 and 310, 6.
[8] Maroto, in *Apollinaris,* 1932, p. 11.
[♦] *Mixed Marriages,* p. 78.

more for a dispensation *in periculo mortis* than is demanded on the grant of a *sanatio.* The faculty accorded to Ordinaries, conceding the power of sanatio, is meant precisely to meet such a situation: "Sanandi in radice matrimonia attentata . . . cum impedimento mixtae religionis aut disparitatis cultus, dummodo consensus in utroque conjuge perseveret, isque legitime renovari non possit . . . sive quia pars acatholica ad renovandum coram Ecclesia matrimonialem conscnsusm, aut ad cautiones praestandas, ad praescriptum Cod. I.C. can. 1061, §2, ullo modo induci nequeat; exceptis casibus: 1. in quo pars acatholica adversatur baptismo vel catholicae educationi utriusque sexus natae vel nasciturae."[*] The matter is not, indeed, beyond dispute, but it docs appear that a too rigid insistence on the letter of the ecclesiastical law requiring the "guarantees" even *in periculo mortis,* before a dispensation may be validly granted, would nullify the benevolent legislation of the Church, which is accustomed, at such a time, to be as liberal as the law of God allows.

297.—Guarantees: The Third Promise

In some dioceses the formula granting a dispensation states that a three-fold "cautio" or "guarantee" is required under pain of the instrument being invalid. How does this harmonise with the Code discipline, which reqtiires merely a two-fold guarantee l

(i) The common law of the Church, previous to the Code, required a three-fold undertaking from the parties of a mixed marriage: a promise from both parties to bring up all the children in the Catholic religion; a promise from the non-Catholic to allow the Catholic the free exercise of religion; a promise from the Catholic to secure, as far as possible, the conversion of the non-Catholic.

These three are mentioned in the instruction of the *Holy Office,* 12 December, 1888,[2] and in some of the other documents cited in the sources of canon 1061, §1. They are mentioned expressly for England by *Propaganda,* 25 March, 1868,[3] and insisted upon in Decretum XIII of our First Provincial Council.[4] The common law gradually introduced some mitigation, to the extent of not requiring expressly the third promise. As far back as 1910 it was noted, in a case before the Rota, that the Holy See could remit, or at least not demand, this promise expressly as a condition for granting a dispensation.[8] It is evident that the Code sustains this mitigation. The two first promises are conditions *sine qua non* in canon 1061, §1.2: "Ecclesia . . . non dispensat nisi . . . cautionem praestiterit conjux acatholicus de amovendo a conjuge catholico perversionis periculo, et uterque conjux de universa prole catholice tantum baptizanda et educanda." The third promise of the older legislation appears now in canon 1062 as a simple statement of the person's obligation: "Conjux catholicus obligatione tenetur conversionem conjugis acatholici prudenter curandi."

1 Formula A, *Facultates Additionales S.Off.,* n. 5.
l Fontes, n. uti, ad 5.
• IK *iFestnr.,* App. xiii. Guy, Eng. Tr., p. 61
'Eng. Tr , p. 146.
* *A.AS.,* II, 191°» P· 595

The Ordinary, therefore, in granting a dispensation, may now be silent about this third promise, on the assumption that the priest knows the law of canon 1062 and will sec that the Catholic becomes aware of this obligation. In some dioceses the acceptance of the obligation is not required in writing but may be given to the priest *viva voce.* Generally speaking, it is an obligation of charity on the part of the Catholic, and the priest must see that the obligation is understood.

(ii) But the Ordinary may, if he wishes, secure the acceptance of the obligation of canon 1062, by requiring an express promise to that effect from the Catholic party. Quite apart from the fact that this is the practice in many dioceses, a practice which cannot properly be criticized, there is not the slightest doubt that, in making this third demand, an Ordinary is acting within his rights. Mixed religion is an impediment of divine law as long as there is danger to the faith of the Catholic party. The bishops are, by their office, bound in conscience to preserve the faith of their flocks: "episcopi semper fuerunt et sunt suarum dioecesium nativi inquisitores et catholicae fidei defensores et conservatores".[1] There is no need to demonstrate the intimate connexion between mixed marriage and heresy, or the favouring of heresy. Therefore, the permission of mixed marriages and, consequently, the conditions on which dispensations may be granted, remains within the competence of the Ordinary. In reserving to the Holy See certain causes relating to heresy, including mixed marriage dispensations, the Popes and the *Holy Office* have never deprived the bishops of the powers native and inherent in the episcopal office.

A dispensation from the impediment of mixed religion, a prohibition contained in the common law of the Church, is reserved *per se* to the Holy See, and the use of powers conceded by induit must, of necessity, be in accordance with the terms of the common law. But this does not mean that Ordinaries who use the papal induit may not also use their own native powers. On the contrary they are warned of their obligations, not only in canon 1064, but in the terms of their quinquennial faculties, Appendix A: "Dispensandi . . . super impedimento mixtae religionis . . . quatenus ante nuptias pars acatholica ad veram religionem adduci aut catholica ab ipsis nuptiis absterreri nequiverit, dummodo prius regulariter ad praescriptum *Cod. I.C.* can. 1061, §2, cautum omnino sit . . . declarata insuper parti catholicae obligatione qua tenetur prudenter curandi, etc." Ter Haar gives, amongst other documents, the letter accompanying a particular dispensation from this impediment, in which the point is even more strongly expressed by the *Holy Office',* "monita parte catholica, ut onus, quod sibi sumpsit curandae conversionis alterius partis . . . maximi faciat, sciatquc ni illud sedulo adimpleat, maximo se piaculo obstringi".[2]

It rests with the conscience of the Ordinary to determine whether the delegated powers he enjoys shall be used and under what circumstances. Thus, in most dioceses, a dispensation is not granted by the bishops unless the non-Catholic party consents to receive some previous instruction on the Catholic religion, a condition which is not in the common law of the Code. De Becker, whose familiarity with English speaking peoples mikes his treatise of unusual value for us, comments as follows: "Quaeri ulterius potest, utrum Ordinarii quasdam valeant ulteriores addere cautelas ita ut

1 Gird. de Luca quoted in *Jus Pontifidum,* 1927, p. 151.
2 *Dt Matrimoniis Mixtis*; p. 152.

iis recusatis a parte acatholica, etiam recusetur dispensatio. Et evidens est Ordinarios plene uti jure suo sic agendo: oportet enim eos agere tanquam bonos dispensatores, maxime in praesenti negotio."[1]

(iii) Finally, it follows as a necessary consequence from what has been said, that an Ordinary may so express this clause regarding the third promise that the validity of the dispensation depends upon its observance. For he has an indult to grant dispensations if he judges it expedient, in his conscience, to do so. He may elect not to use the power he possesses, even though the parties are prepared to make, not only three, but a dozen promises; *afortiori,* therefore, it seems that he can use these powers with an invalidating clause.

Canon 1039 does not modify this doctrine. It is concerned with the power of an Ordinary to forbid the marriage of a particular subject, thus constituting a special impediment outside those of the common law of the Church. Section 2 of the canon states that the Holy See alone can add to this prohibition an invalidating clause, i.e. make it a diriment impediment. The canon is not relevant to the subject we have been examining.

Ayrinhac, quoting *Canoniste Contemporain,* July 1912, p. 502, says that the third promise, if required, must be exacted "at least for the licitness of the dispensation, and probably for the validity."[2] There is no need to qualify the statement, we think, by the word "probably". It is certain, provided, of course, that the will and intention of the Ordinary are certainly expressed. "Ergo, obligatio quidem imponitur parti catholicae 'conversionem conjugis acatholici prudenter procurandi' ad quam jam ex prccepto divino caritatis tenetur, sed nec susceptio obligationis ponitur ut *conditio* ad dispensationem, nec *cantio* de tali obligatione implenda a conjuge catholico exigitur (canon 1062). . . . At ex tali silentio iuris communis non sequitur a parocho non esse inculcandam illam obligationem atque adeo non posse exigere *promissionem* etiam *scripto* consignatam, si jure particulari aut legitimo praescripto Ordinarii id cautum fuerit. Conditiones cum nitantur iure naturali et divino, a R. Pontifice neque remitti possunt neque unquam de facto sunt remissae. Quodsi de illis conditionibus rite cautum non sit, exccutio rescripti dispensationis, in qua reperitur clausula: 'Dummodo, etc./ omnino est invalida."[3]

298.—Guarantees in Writing

Canon 1061, §2, *directs: "Cantiones regulariter in scriptis exigantur May we conclude that, in exceptional cases, a verbal promise suffices?*

(i) It may be useful to state, at the outset, that the conditions on which a dispensation from mixed religion is granted depend, not only on the common law of the Code, but on the will of the Ordinary who enjoys delegated powers in this matter. His use of these powers must be in accordance with the common law, but this does not mean that he may not insist on additional formalities which are not contained, perhaps, cither in the common law or in local provincial law. His indult *permits* him to dispense

[1] *De Matrimonio,* p. 92.
[2] *Marriage Legislation,* canon 1062.
[3] Wemz-Vidal, *Ius Canonicum,* V, p. 191.

from the impediment if he thinks it expedient. If this fact is borne in mind, the variety of practice in different dioceses is at once apparent[1]

(ii) In most English dioceses the parties are required, not only to give a written promise, but to sign a form in the presence of the priest In other places the Ordinary requires two witnesses, or even that the promise should be subscribed under oath. These arc diocesan regulations and it is clearly open to the Ordinary to dispense from them for any reason.

Occasionally it will be found that the regulations have their origin in a provincial law. In this case, an Ordinary who wishes to do so may dispense from them in particular cases only. Canon 291, §2: "Decreta Concilii plenarii et provincialis promulgata obligant in suo cuiusque territorio universo, nec Ordinarii locorum ab iisdem dispensare possunt, nisi in casibus particularibus et iusta de causa". Thus the Provincial Council of Utrecht, 1924, requires "duplex instrumentum, quorum alterum continet cautiones a parte catholica, alterum cautiones a parte acatholica praestitas, utrumque subscriptione respcctivi sponsi, duorum testium et ipsius parochi".[2] In the First Provincial Council of Westminster, Decretum XXII, ad 6, nothing is determined concerning the legal form of the promises, nor is it even directed that they must be given in writing.

(iii) The common law of the Church, from which no Ordinary may dispense, except in the rare contingencies of canon 81, directs the guarantees to be in writing "regulariter", but nothing is directed concerning the form of this written document. Cardinal Gasparri explains the force of the word "regulariter" as follows: "Pariter scriptura jure communi non est absolute necessaria, sed regulariter cautiones in scriptis exigantur nisi justae gravesque causae obstent, tum quia promissio scripta maiorem vim habere solet, tum quia cautiones scriptae deinde in archivo parocciali aut etiam in Curia episcopali diligenter custodientur."[3]

Apart, therefore, from the case where the faculties of the Ordinary are expressly qualified by a phrase requiring the guarantees in every case to be in writing, a dispensation may be granted on a verbal promise, even outside the contingencies of canon 81, if all the other conditions arc verified—particularly the moral certainty of the promises being observed. The mind of the *Holy Office* was explained 10 December, 1902: "Quod si in aliquo casu extraordinario talia concurrunt adiuncta, ut episcopus valeat sibi comparare moralem certitudinem tam de huiusmodi cautionum sinceritate pro praesenti, quam de earum adimplemento pro futuro, spccialesque omnino adsint rationes impedientes ne consueto modo cautiones praestentur, ipsius conscientiae et prudentiae."[4]

Mgr. Nau admirably seizes the point at issue: "Ordinarily the guarantees must be given in writing, wherefore there must be a serious reason to accept merely a verbal promise before witnesses. The refusal to sign the guarantee is not necessarily an indication of insincerity. Some, especially among the less educated, are afraid to sign any document lest some material harm come to them. Some non-Catholics fear lest the document be published with their signature. Others again because of their prejudices constantly suspect some afterthought in the minds of Catholics. However, if there be any founded

1 Cf. Q. 297
a Clacys-Bouuaert, *Jus Canonicum,* 11, §268, n. (4).
• *De Matrimonio,* §452.
4 *Fontes,* n. 1262.

suspicion of insincerity concerning the reason for such refusal, the dispensation cannot be granted."[1]

Hence, the decision rests entirely with the Ordinary. The priest applying for a dispensation can only represent, as strongly as he pleases, the view that there exist the gravest reasons why the guarantees should not be required in writing. Of far greater importance is the moral certainty concerning the fulfilment of the guarantees, and experience leads us to believe that this is sometimes wanting, even though the promises are solemnly given in writing, and witnessed by the priest.

299.—Guarantees and Sanatio

the wording of the formula granting quinquennial faculties to Ordinaries, a "sanatio in radice" may be applied to marriages contracted civilly, whenever, amongst other reasons, the non-Catholic party refuses to give the guarantees required by canon 1061, §2. *How does this harmonise with the rule of canon* 1060 *which states that such marriages are forbidden by divine law, unless the danger of perversion to the children is removed?*

The formula referred to, which is now superseded, may be seen in Bouscaren, *Digest,* I, p. 63, *Collationes Brugenses,* 1923, p. 411, or Wernz-vidal *Ius Canonicum, V,* p. 503, n. 67: "Sanandi in radice matrimonia attentata coram officiali civili . . . cum impedimento mixtae religionis aut disparitatis cultus . . . sive quia pars acatholica ad renovandum coram Ecclesia matrimonialem consensum, aut ad cautiones praestandas, ad praescriptum Cod. I.C. 1061, §2, ullo modo induci nequeat; dummodo aliud non obstet canonicum impedimentum, super quo Ipse dispensandi aut sanandi facultate non polleat." The formula requires the Ordinary to warn the Catholic party of the obligation of safeguarding "pro viribus" the faith of the children.

This formula was certainly capable of being read in the sense that a *sanatio* could be obtained, even though the non-Catholic was opposed to the Catholic education of the children, provided the Catholic undertook to do all in his or her power to have them educated in the Catholic faith. This view was, in fact, held by many canonists interpreting these faculties.[2] Others were of the opinion that a *sanatio* could not be granted, under these faculties, if the refusal of the non-Catholic party constituted a danger to the faith of the children; for the marriage would then be forbidden by divine law.[3]

However, as a writer in *Apollinaris* notes,[4] the Holy See in recent years has expressed more strictly the conditions under which a *sanatio* in these circumstances may be granted. In a later formula, between the words "nequeat" and "dummodo", the following clause is added: "exceptis casibus: (1) in quo pars acatholica adversatur baptismo vel catholicae educationi prolis utriusque sexus natae vel nasciturae; (2) in quo ante attentatum matrimonium, sive privatim sive per publicum actum, partes se obstrinxerunt educationi non-catholicae prolis, uti supra".[6] Whatever

[1] *Marriage Legislation of the Code,* p. 74.
[2] Cf. Ter Haar, *Mixed Marriages,* p. 96.
[3] Cf. *Irish Ecclesiastical Record,* March, 1933, p. 302.

[4] Cf. Ter Haar, *ibid., Ecclesiastical Review,* July 1932, p. 7

therefore may have been held about the earlier formula, it is now quite certain that there is no possible contradiction between canon 1060 and the formula of quinquennial faculties. The divine law requires that there should be moral certainty concerning the removal of the danger of perversion, and this may exist even though the non-Catholic party refuses to sign the guarantees, since a prudent judgement may be formed that, in spite of this, the Catholic education of the children will *de facto* be secured.

300.—Lapsed Catholic's Marriage

Titius, baptised and educated as a Catholic till the age often, when bis parents died, was brought up by Protestant relatives and attended a Protestant school and church till early manhood, when he gave up the practice of religion. He now says (bat if he wanted to belong to any religious body, which he actually does not, he would be a Catholic. Is a dispensation from mixed religion necessary? If not, may he be regarded as a Catholic for the purpose of marriage and its accompanying rites ?

Canon 1065, §2: Parochus praedictis nuptiis (cum iis qui notorie catholicam fidem abiecerunt) ne assistat, nisi consulto Ordinario . . .

Canon 1066: Si publicus peccator . . . cum Ecclesia reconciliari recusaverit, parochus eius matrimonio ne assistat, nisi gravis urgeat causa, de qua, si fieri potest, consulat Ordinarium.

(i) Many very dubious points converge in cases of this kind. It could be urged, in favour of the man retaining the rights of a Catholic to be married like any other, that there exists no certain obex, impediment or censure which deprives him of these rights; cf. canon 87. His rejection of the Catholic faith is not notorious: if he belonged at one time to a non-Catholic sect, which is doubtful, he is no longer in this condition, nor is he a member of an atheistical society which is equivalent for legal purposes to a sect.[1]

Ignorance of Christian doctrine is not in itself a bar to marriage; cf. *Code Commission,* 2-3 June, 1918, quoted in the Instruction *S.C. Sacram.,* 29 June, 1941, n. 8. Similarly a refusal to frequent the sacraments is not in itself an obstacle; cf. canon 1035. The penal sanctions formerly attached to neglect of Easter duties are now abrogated.

(ii) On the other hand, it must always be remembered that a marriage which endangers the faith of the Catholic party or of the children is forbidden by divine law, and the danger must be removed before any such union may be permitted. The requirements of canons 1065 and 1066 are precisely for the purpose of bringing these dangerous cases to the Ordinary's judgement, and even though it could be maintained, perhaps, in the strict interpretation of the positive law, that the above case just fails to come clearly within either of these canons, it is obviously the prudent course to submit it to the Ordinary's decision.

(iii) If we may assume that the circumstances are those of canon 1066 and that the priest has himself, with proper precautions, decided in favour of the marriage, there remains the question of rites, namely whether the nuptial blessing with or without Mass is to be given.

1 Code Commission, jo July, 1954.

Seeing that the prohibition of canon 1102, §2, is not contained in canon 1066, some hold the view that a nuptial Mass is not forbidden, c.g. De Smet, *De Matrimonio,* §196, and the view is supported by a reply of the *Holy Office, 2i* February, 1883, *Fontes,* n. 1079. Others, relying on an earlier reply, 5 July, 1878, which is not in the *Fontes,* refuse to permit any sacred rites at all.[1] On the whole, we prefer the liberal view of De Smet, provided always that scandal to the faithful is avoided.

301.—Disparut op Worship: Implied Dispensation

Before the Code it was the law that a dispensation front this impediment included dispensation from any other ecclesiastical impediment affecting the non-Christian party. Some authors affirm that, at the present time, this law is still inforce, at least in missionary countries·, others affirm that it is everywhere abrogated. What is your opinion ?

The pre-Code law rested on a decision of the *Holy Office, iG* September, 1824, ad 2.[2] After the Code was promulgated some writers, as De Smet, considered that this rule was abrogated since it was not mentioned in the Code, whereas other virtual or implied dispensations were mentioned, as in canon 10$3. Others, as Cappello and Wcrnz-Vidal, relying on canon 6 and the *stylus curiae* of canon 20, held that it was not abrogated.

This latter view, namely that a dispensation from disparity of worship virtually included a dispensation from other impediments, received the strongest official confirmation in two ways: (‹-/) from a reply of *Propaganda* to a Chinese bishop;[3] (/›) from the approved text of the law in *Primum Concilium Sinense,* 1924, n. 396: ". . . dispensatio super disparitatc cultus, etiam a S. Sedis delegato concessa, semper importat dispensationem super aliis impedimentis iuris ecclesiastici relativis, super quibus Ecclesia aliunde dispensare solet".

Nevertheless, the *Holy Office,* 16 April, 1931,[4] and again, 30 June, 1932, decided in the stricter sense that a dispensation from other impediments is *not* virtually included in a dispensation from disparity of worship. The text of this final decision, conveyed through *Propaganda* to the Chinese Apostolic Delegate, is as follows:

"Utrum in Sinis valere pergat dispositio primi Concilii anno 1024 celebrati, vi cuius secundum antiquam praxim in dispensatione super cultus disparitatc Ecclesia dispensare intclligcbatur etiam ab impedimentis, a quibus pars infidelis erat exempta; an potius standum sit Decreto S. Officii dici 16 Aprilis 1931, iuxta quod Ecclesia in talibus casibus non intclligitur dispensare ab impedimentis a quibus exempta est pars acatholica."

"Essaminato accuratamcnte il dubbio proposto, questa Suprema S.C. ... ha ordinato di respondere: *Negative* ad primam partem; *Affirmative* ad secundam partem. Et ad mentem: Mens est ut corrigatur can. 396 Concilii Sinensis anno 1924 celebrati."[0]

[1] Chclodi, *Ita Matrimonial·,* §67.
[*] *Fonta,* n. 866.
[*] 2 December, 1922; *Syllogt,* n. 107, ad 2.
[4] *'SlHoy,* n. IJ7.
[*] *Slllogt,* o. 169.

302.—Dispensation "Ad Cautelam"

A dispensation it obtained throng}) the diocesan curia from the impediment of mixed religion and, since the validity of the non-Catholic baptism was doubtful, the document contained in addition the words "etiam, ad cautelam, super disparitate cultus". After the dispensation was executed by the priest who applied for it, it transpired beyond all doubt that the person was not baptised. Is ii necessary to apply again for a dispensation from the impediment of disparity of worship ?

Canon 15 : Leges, etiam irritantes et inhabilitantes, in dubio juris non urgent; in dubio autem facti potest Ordinarius in cis dispensare, dummodo agatur de legibus in quibus Romanus Pontifex dispenare solet. Cf. also canon 81.

Canon 209: In errore communi aut in dubio positivo et probabili sive juris sive facti, juridictionem supplet Ecclesia pro foro tum externo tum interno.

Vacuitates Additionales S. Cong. S. Officii (A): (i) Dispensandi, justis gravibusque accedentibus causis, cum subditis etiam extra territorium, aut non subditis intra limites proprii territorii, super impedimento mixtae religionis, et, si casus ferat, etiam super disparitatc cultus, ad cautelam. . . . (ii) Dispensandi, justis gravibusque accedentibus causis, cum subditis etiam extra territorium, aut non subditis infra limites proprii territorii, super impedimento disparitatis cultus (excepto tamen casu matrimonii cum parte judaica aut mahumentana), . . ,

Dispensation from impediments obtained from a diocesan curia, by virtue of faculties granted to them by the Apostolic See, arc usually issued *informa gratiosa·,* that is to say, the impediment is dispensed at the moment the document is issued. What the priest docs is not to execute the dispensation but merely to acquaint the parties of the fact that the dispensation has been granted.

It is evident that the formula issued for mixed religion, including *ad cautelam* disparity of worship, will not suffice for a case which is certainly disparity of worship, and known so to be at the time of its issue. But, it the dispensation is properly granted, in a case of doubtful baptism, with the formula *ad cautelam,* the subsequent marriage is most certainly valid, even though it is discovered that *de facto* the non-Catholic was not baptized. In other words, for the validity of the marriage, no further dispensation is required. The situation is amply covered by the wording of the quinquennial faculties, and even without these faculties it is covered by canon 15, not to mention the "supplied jurisdiction" of canon 209. "In cases of doubt of fact, the Ordinary may dispense, that is the Ordinary is always empowered to dispense, at least *ad cautelam,* though a dispensation may not always be required. A dispensation is undoubtedly required in a *dubium facti* concerning a matrimonial impediment. For the law of the impediment being an invalidating law, strictly speaking obtains, and if later the existence of the impediment is really established, the Church regards such a marriage as invalid. . . ." Thus writes Cicognani on canon 15.1 Later on in this treatise, p. 843, commenting on canon 82, he writes, "However, when, for

1 *Canon I-aw,* Hng. Tn, p. 589.

example, the matter concerns a doubtful diriment matrimonial impediment, which becomes certain later on, the marriage should be regarded as valid if the Bishop dispensed, otherwise invalid."

303.—Ordinary for Dispensation

Titius dwelling in diocese "X" desires to contract a mixed marriage in diocese "Y". The Ordinary of "X" refuses a dispensation, and Titius, concealing this refusal, seeks and obtains a dispensation from the Ordinary of "Y". Is this procedure valid and lawful?

(i) "Ex generali regula (potestas dispensandi) tam ordinaria quam delegata exercetur in subditos ratione domicilii vel quasi-domicilii aut actualis commorationis si agitur de vago, *non ad alios nisi expressa fiat extensio potestatis."*[1] Exceptions to the general rule, in the common law, may be seen in canon 1045: "in proprio territorio actu degentes" and in canon 1313, n. 1: "etiam ad peregrinos". Other exceptions may be established from the terms of the delegated faculties enjoyed by an Ordinary. In the case of mixed religion, the ordinary formula in the quinquennial faculties expressly mentions that the dispensation may be extended to those who are not subjects of the Ordinary: "Dispensandi, iustis gravibusque accedentibus causis, cum subditis etiam extra territorium, aut non subditis intra limites proprii territorii."[2] The Ordinary of "Y", who no doubt enjoys these faculties, is competent, therefore, validly and lawfully to dispense from the impediment for any marriage within his territory.

(ii) Canon 44, §1: "Nemo gratiam a proprio Ordinario denegatam ab alio Ordinario petat, nulla facta denegationis mentione; facta autem mentione, Ordinarius gratiam ne concedat, nisi habitis a priore Ordinario denegationis rationibus." From a comparison between this canon and the preceding one, which rules that a dispensation refused by the Roman Congregations cannot validly be granted by an Ordinary without the consent of the Congregation, it is evident that the non-observance of canon 44, §1, does not invalidate the dispensation granted. Titius, therefore, acts unlawfully in not disclosing the previous refusal by the Ordinary of "X", but the resulting dispensation is validly given by the Ordinary of "Y".

304.—Mixed Marriage without Dispensation

A Catholic man, who has contracted a mixed marriage without a dispensation, is now repentant and desires to receive the sacraments. He was married "coram Ecclesia" by concealing the fact that his bride, though validly baptised, was a non-Catbolic Should anything further be required from him beyond securing the usual promises which should have been made before the marriage?

Canon 2375: Catholici qui matrimonium mixtum, etsi validum, sine Ecclesiae dispensatione inire ausi fuerint, ipso facto ab actibus legitimis

[1] W'ernz-Vidal, *lus Canonicum,* V, §423; cf. cann. 201, §§1 and 3.

['] *Facultatis Additionales S. Off.,* n. 1. The formula is printed in Wcrnz-Vida) *lus Canonicum,* V, §416, n. 67, and in *Collationes Brugenses,* 1923, p. 410.

ecclesiasticis et Sacramcntalibus exclusi manent, donec ab Ordinario dispensationem obtinuerint.

The situation could not easily have arisen if the laws regarding the preliminaries of marriage had been observed: examination of the parties; obtaining of baptismal certificates; publication of banns; proof of freedom to marry. The marriage was contracted unlawfully, and the man must repent of the deceit employed in getting married without a dispensation from the impediment of mixed religion.

The common distinction in seeking dispensations is between *ad contrahendum* and *ad convalidandnm,* but neither strictly apply to this case: not *ad contrahendum,* since the marriage is already contracted: not *ad convalidandnm,* since it is certainly valid supposing that no diriment impediment is present. A writer in *Periodica,* 1932, p. 178, deals at length with the suggestion that a marriage of this kind is invalid for the following reasons: "Ecclesia nolit assistere ad matrimonia ubi periculum perversionis manet. Ergo dicitur Ecclesia in casu non adstare matrimonio quod proinde est invalidum." Hc has no difficulty whatever in showing the weakness of this line of argument, and there can be no serious doubt that the marriage is valid.

The case is dealt with by Pius VI in an Instruction on mixed marriages given to the Archbishop of Malines, 13 July, 1782.1 "Supcrest nunc de uno adhuc puncto loquendum, super quo licet non simus expresse interrogati silentio tamen illud praetereundum non credimus, utpote quod in praxi nimis frequenter possit accidere, hoc scilicet: an contrahens catholicus, postea volens Sacramentorum particeps fieri, ad ea debeat admitti? Ad quod dicimus, dum idem ille demonstrabit, poenitere se pcccaminosac suae coniunctionis, poterit hoc ipsi concedi, modo ante confessionem sincere declaret, procuraturum se conversionem coniugis haereticae, renovare se promissionem de educanda prole in religione orthodoxa et reparaturum sc scandalum aliis fidelibus datum. Si tales conditiones concurrant, non repugnamus nos, quominus pars catholica Sacramentorum fiat particeps."

As provided for in canon 2375, the usual guarantees must be given by the man and his wife, and a dispensation obtained in order to regularize the marriage which was contracted unlawfully, and which remains unlawful until it is sanctioned by the Church.

§j. THE FORM OF MARRIAGE

305.—Assisting Priest: Curate

Does the assistant priest attached to a parish {vicarins cooperator) enjoy the power to assist validly at marriages?

Canon, 476, §6: Eius iura et obligationes ex statutis dioccesanis, ex litteris Ordinarii et ex ipsius parochi commissione desumuntur; sed, nisi aliud expresse caveatur, ipse debet ratione officii parochi vicem supplere cumque adiuvarc in universo parocciali ministerio . . .

Code Commission, 31 January, 1942, ad i: An vicarius cooperator, *ratione*

1 Fontes, n. 471.

officii de quo in canone 476, §6, matrimoniis valide assistere possit. *Resp,* Negative.

25 January, 1943, ad i: An Delegato episcopali, cui conceditur facultas delegata ad universitatem negotiorum iuxta canonem 199, §1, hoc ipso concessa intclligatur vel saltem concedi possit delegatio generalis ad assistendum matrimoniis, attento canone 1096, §1. *Resp.* Negative.

These decisions settle a dispute of some years' standing and are of particular importance for the validity of marriages in some English dioceses. A reply of the *Code Commission,* 20 May and 13 December, 1925, V, ad 6, amplified in another reply, 28 December, 1927, settled the curate's (vicarius cooperator) power of sub-delegating another priest to assist at marriages by referring us to Canon 476, §6. It took for granted that the curate himself was empowered to assist but did not determine whence this power was obtained. Before 1934 certain writers in *Jus Pontificium* held that it was obtained de iure from canon 476, §6, others contributing to *Apollinaris* denied this contention; the situation then existing was summarized in *The Clergy Review,* VI, 1933, p. 324.

Apollinaris, 1934, p. 77, and other journals of that year published a reply of Cardinal Gasparri, the president of the *Code Commission,* to the effect that a curate could not rely on canon 476, §6, for the power validly to assist at marriages; the text may be seen in *The Clergy Review,* VIII, 1954, p. 248. From 1934 onwards, writers who were aware of this reply and who were anxious, nevertheless, to regard the curate's assistance as always valid, could only do so by invoking common error, a title to jurisdiction which is full of difficulties and pitfalls for the unwary, and therefore unsatisfactory for determining a matter of such moment as the validity of marriages. As recently as 29 June, 1941, the *Congregation of the Sacraments* had occasion to observe that many marriages were invalid because the assisting priest lacked the necessary delegation.

The opportuneness, therefore, of officially promulgating Cardinal Gasparri's reply given some years ago will be apparent to everyone. The usual method of assuring the validity of the curate's assistance and, at the same time, of preserving the authority and rights of the parish priest, is for the Ordinary himself to delegate curates for this purpose, subject for the lawfulness of the act to the parish priest's consent. Some phrase of this character is found in the *pagella* of faculties issued by many Ordinaries in this country.

306.—Assisting Priest: Supply

A priest is supplying at a parish church whilst the parish priest (the only priest of the parish} is on holiday. What powers does he possessfor assisting at marriages andfor delegating others ?

Canon 465, §4: Sivc continuum sive intermissum sit vacationum tempus, cum absentia ultra hebdomadam est duratura, parochus, praeter legitimam causam, habere debet Ordinarii scriptam licentiam et vicarium substitutum sui loco relinquere ab eodem Ordinario probandum. . . .

§5. Si parochus repentina et gravi de causa discedere atque ultra hebdomadam cogatur abesse, quamprimum per litteras Ordinarium commone-

faciat ei indicans causam discessus et sacerdotem supplentem, eiusque stet mandatis.

Canon 474: Vicarius substitutus qui constituitur ad normam can. 465 . . . locum parochi tenet in omnibus quae ad curam animarum spectant, nisi Ordinarius loci vel parochus aliquid exceperint.

Code Commission, 14 July, 1922:

I. Utrum vicarius substitutus, de quo in canone 465, §4, possit post Ordinarii approbationem licite et valide assistere matrimoniis, si nulla limitatio apposita fuerit.

II. Utrum idem vicarius id possit etiam ante Ordinarii approbationem.

III. Utrum idem vicarius parochi religiosi id possit post approbationem Ordinarii, sed ante approbationem superioris religiosi.

IV. Utrum vicarius, seu sacerdos supplens, de quo in citato canone 465, §5, id possit ante approbationem Ordinarii.

R.-Ad I. Affirmative. Ad II. Negative. Ad III. Affirmative. Ad IV. Affirmative, quoadusque Ordinarius, cui significata fuit designatio sacerdotis supplentis, aliter non statuerit.

20 May, 1923 :

I. Utrum vicarius oeconomus legitime constitutus in paroecia vacante, ad normam canonum 472 et 475, possit licentiam assistendi matrimonio dare sacerdoti determinato ad matrimonium determinatum.

II. Utrum id possit vicarius substitutus, de quo in canone 465, §4, post Ordinarii approbationem, si nullam limitationem Ordinarius apposuerit.

III. Utrum vicarius parochi religiosi id possit post Ordinarii approbationem, sed ante approbationem superioris religiosi.

IV. Utrum vicarius, seu sacerdos supplens, de quo in citato canone 463, §5, id possit ante Ordinarii approbationem.

R.-Ad I. Affirmative. Ad II. Affirmative. Ad III. Affirmative. Ad IV. Affirmative, quoadusque Ordinarius, cui significata fuit designatio sacerdotis supplentis, aliter non statuerit.

(i) By a "supply priest" may be meant a "vicarius substitutus" properly constituted according to the terms of canon 465, §4. A comparison between canons 197, §1, 474 and 875, §1, shows that the jurisdiction of this priest is "ordinary", and it necessarily follows, therefore, that not only can he validly assist at marriages, as the *Code Commission* reply in 1922 determines, but that he can also delegate another priest to do so, as the reply of 1923 decides.

In many places the common law is still more specifically determined by local legislation, for example, that no foreign priest may be left in sole charge during the holidays of the parish priest. In our view these additional local regulations must be observed for the valid appointment of the "vicarius substitutus", and consequently for his valid assistance at marriages.[1]

(ii) It may happen that, in ignorance of the law as explained above, the parish priest secures a supply without the Ordinary's intervention, or that the supply priest is engaged for less than a week. In these instances the power of this priest validly to assist at marriages will depend on his obtaining delegation for each occasion, either from the parish priest or from the Ordinary, according to the well-known law of canons 1094-1096. Failing this express delegation the marriages at which he assists are invalid, unless

1 Cf. CLieys-Bouuaert in *Jus Pontificium,* 1927, p. 78.

it can be shown that he enjoyed the power from canon 209, on the title of common error.

(iii) There is, finally, the position of assistant priests (vicarii cooperatores) in this question. In many dioceses all the assistant priests receive from the Ordinary delegation for the valid assistance at all marriages within their parishes, a most prudent and opportune measure.

If they are not thus delegated, the powers of the senior who is left in charge of the parish, during the parish priest's absence for more than a week, can easily be settled. The senior assistant priest, *qua* "vicarius substitutus", needs the Ordinary's approbation as explained in (i); *qua* "vicarius cooperator" it is now quite certain that he enjoys no power to assist at marriages, and his position is that of the priest in (ii).

307.—Assisting Priest: Sub-delegation

The parochus of "A" delegates the parochus of "B" to assist at a marriage in parish "A". But, being prevented from attending, the parochus of "B" *requests the curate of "B" to take his place; is this invalid?*

Canon 1095, §2: Parochus et loci Ordinarius qui matrimonio possunt valide assistere, possunt quoque alii sacerdoti licentiam dare ut intra fines sui territorii matrimonio valide assistat.

Canon 1096, §1: Licentia assistendi matrimonio concessa ad normam Can. 1095, §2, dari expresse debet sacerdoti determinato ad matrimonium determinatum, exclusis quibuslibet delegationibus generalibus, nisi agatur de vicariis cooperatoribus pro paroecia cui addicti sunt; secus irrita est.

Code Commission, 28 December, 1927, IV, ad ii: An parochus vel loci Ordinarius, qui ad normam canonis 1096, §1, sacerdotem determinatum delegaverit ad assistendum matrimonio determinato, possit ei etiam licentiam dare subdelegandi alium sacerdotem determinatum ad assistendum eidem matrimonio. *Rjesp.* Affirmative.

The solution to this query turns upon discovering whether the parochus of "A" conceded to the parochus of "B" the power to subdelegate. If, as it appears, he did not do so, the marriage is invalid, unless it can be shown that there was "common error" (canon 209).

Until the decision of 28 December, 1927, there was some little doubt whether the general principles on delegation in canon 199 could be applied to delegation for marriages, since the canon was concerned with jurisdiction, and the assistance at marriage is not, properly speaking, an act of jurisdiction. Before 1927 the writers, for the most part, held the view officially adopted by the *Code Commission,* which is merely an application of the rule in canon 199 to marriage delegation. The essential point is that the delegating priest shall have expressly conceded to his delegate the power to sub-delegate another priest; the meaning is not that the delegating priest shall himself name this subdelegate, but that the delegate is empowered to sub-delegate a priest at his choice, who in accordance with the law of canon 1096, §1, must be "sacerdos determinatus ad matrimonium determinatum".

It is always, therefore, safer to concede the power to sub-delegate in all

cases of this kind, when the parochus of one parish delegates the parochus of another to assist at a marriage in the former's territory. If this has not been done in the above case, the curate could not validly assist without first obtaining either delegation from the Ordinary, or delegation from the parochus of "A", or subdclegation from a curate of "A" who may have obtained delegation for all marriages within the territory of "A".

308.—Ab Acatholicis Nati

made his first Communion. But, owing to the death of his parents when be was about tightyears old, he was brought up as a non-Catholic. Is he bound to observe the form of marriage ?

Canon 1099, §2: Acatholici sive baptizati sivc non baptizati, si inter sc contrahant, nullibi tenentur ad catholicam matrimonii formam servandam; item ab acatholicis nati, etsi in Ecclesia catholica baptizati, qui ab infantili aetate in haeresi vel schismate aut infidelitate vel sine ulla religione adoleverunt, quoties cum parte acatholica contraxerint.

From this canon the law regards certain children as being equivalent to non-Catholics and, therefore, not subject to the canonical form of marriage. In order that they may benefit by this exemption two conditions must be verified, so that if one or other is lacking the exemption cannot be claimed. The two conditions are that the child be born of non-Catholic parentage and brougi·.- no from infancy in heresy, schism, infidelity or indifference.

(i) Thu irst condition is now plain beyond all reasonable doubt owing to various decisions of the *Code Commission.* The exemption applies to the child of a mixed marriage even when the customary guarantees have been given (20 July, 1929), that is to say, "ab acatholicis" does not mean that both parents are non-Catholics. Further, the exemption applies to the case of a child of apostate parents (13 February, 1950), and this is usually interpreted, on analogy with the reply of 20 July, 1929, to apply even when only one parent has apostatized. The force of both these decisions is declaratory, not extensive, i.e. the decision applies to all marriages contracted before these replies were given and not merely to those contracted since (25 July, 1951).[1]

(ii) But the second condition, "qui ab infantili aetate in haeresi, etc.", has not yet been clearly defined, and the authors, for the most part, are wisely content to repeat the phrase of the canon without committing themselves too much. It is a question as to what has happened to the religious education of such a child after attaining the age of seven. One of the few writers who have attempted a definition states: "There is no authentic decision on this point, but it seems reasonable to state that if such have received their first Holy Communion, or have been confirmed after their seventh year, they are presumed to have been educated in the faith and arc thus held to the form."[2] We think this is a good definition pending some official decision. In the meanwhile, unless it is clear beyond dispute that this second condition is not verified, the marriage of such a person without

1 Cf. *The Clergy Review,* XVI, 1939, p. 511.
• Nau, *Marriage Lans of the Code,* p. 155.

observing the canonical form must be considered valid. But it would be better, if possible, *ad cautelam,* to secure a renewal of consent with the prescribed form in all cases which arc only doubtfully included in this exemption.

309.—Special Form of Marriage

What provision is made for marriages in mission territories which have no residentpriest?

Canon 1098: Si haberi vel adiri nequeat sine gravi incommodo parochus vel Ordinarius vel sacerdos delegatus qui matrimonio assistant ad normam canonum 1095, 1096: 1. In mortis periculo validum ct licitum est matrimonium contractum coram solis testibus; et etiam extra mortis periculum, dummodo prudenter praevideatur eam rerum conditionem esse per mensem duraturam.

(i) The application of the canon depends for its validity on the verification of a fact, namely that the competent priest cannot be obtained. It is an exception to the law which, according to canon 19, must be strictly interpreted, and some recently published decisions of the Rota have upheld the invalidity of marriages attempted under the terms of this canon. In one case there was a *bona fide* belief that the priest could not be had, but it was an erroneous belief. "Itaque, ut his exceptionibus locus sit, requiritur in primis factum quoddam, quod nempe haberi vel adiri nequeat sine gravi incommodo parochus vel Ordinarius vel sacerdos delegatus qui matrimonio assistant. Hinc, si quis per errorem, licet excusabilem, credat ministrum catholicum, de quo supra, haberi vel adiri non posse sine gravi incommodo, coram solis testibus contrahere valide nequit."[1]

In another case, which turned on interpreting the words "sine gravi incommodo", it was decided that a distance of eleven kilometres (about seven miles) between the parties and the priest was not, in the circumstances, a *grave incommodum*^ "Impossibilitas parochum habendi vel adeundi est absoluta, si tempus desit omnino aut medium nequaquam suppetat, ut vel nupturientes ad ipsum se conferre vel cum eo convenire possint vel ut ab eodem per epistolam delegatio obtineatur; est relativa, si notabile damnum physicum vel morale arcessito parocho aut partibus aut tertiae cuidam personae aut bono publico proveniret. Unde sponsi non tenentur magnas expensas sustinere, vel iter valde durum et molestum suscipere, aut periculo alicuius gravi damni se exponere, ut testem qualificatum habeant, quamvis forte neglexerint culpabiliter, immo fraudulenter, occasionem eum commode habendi. Solum actuale incommodum a lege heic respicitur, proinde suflicit et requiritur personalis impossibilitas; sufficit, ita ut non requiratur communis; requiritur, ita non sufficiat communis seu localis, exclusa personali, quia si adsit possibilitas personalis non verificatur grave incommodum."[2]

(ii) There may often be some element of doubt in applying this canon. Therefore, in vast districts such as the Chinese missions, wide faculties are obtained for dispensing from the form of marriage. The question arose first

[1] S.R. Ro/ar *Dtcirionec,* XVIII, 1926, *coram* Maximo-Massimi, p. 18.
[2] *Ibid., coram* Florckak, p. 288.

in 1908, on the promulgation of the decree *Ne Temere,* and the Holy See preferred this method of dispensation rather than that of exempting whole districts from the terms of the law: ". . . concedendam esse iisdem Ordinariis (in vastissimo Sinarum imperio) facultatem dispensandi a forma substantiali matrimonii pro casibus tantum verae necessitatis, cum potestate hanc facultatem habitualiter subdelegandi missionum rectoribus".1 Payen interprets "missionum rectoribus" to include those who are not even technically *qttasi-parochi* in the sense of canons 451, §2, and 216, §}.2* A decision of *Propaganda,* 12 April 1933, gives an even wider interpretation: . sub verbis *missionum rectoribus* in locis missionum ubi quasi-paroeciae existunt, comprehendantur etiam vicarii cooperatores".3

310.—Form of Marriage in Germany

A German refugee was married to a non-Catholic in Germany before the civil registrar of marriages. He maintains that in Germany such marriages are indeed discountenanced by the Church, but that they arc regarded as valid, since that country enjoys a privilege exempting mixed marriages from the canonical form of canon 1094.

It is true that, even after the promulgation of *Ne Temere,* mixed marriages in Germany and Hungary continued to enjoy, in certain conditions, exemption from the canonical form of marriage, as conceded to them by the constitution *Provida,** which came into force 15 April, 1906. Between this date and the promulgation of the Code in 1918, some slight changes in the law were introduced, which made a judgement on the validity of certain of these marriages a rather difficult problem.6

But, from 19 May, 1918, when the legislation of the Code came into force, it is quite certain that the privilege ceased, and that these countries came under the common law of canon 1094. The constitution *Provida* is abrogated in accordance with canon 6, as a particular law contrary to canon 1094; it does not remain as a privilege or induit according to canon 4. Accordingly it is no longer mentioned even by the manualists, as a rule, and those who discuss the point, including German canonists of repute, agree that it is no longer operative. Thus Dr. Hecht in *Jus Pontificium,* 1930, p. 36: "Jus particulare Germaniae et Hungariae hac in re canone 6 abrogatum est, prout etiam Commissio Pontificia die 30 martii, 1918, respondit. Quare incipiente die 19 Maii, 1918, etiam in Germania ius commune vigere coepit." Linneborn-Wcnncr, *TJserecht,* 1935, p. 373: "Vom 19 Mai, 1918, an sind Mischehcn dic nicht gcmâss den Vorschriften des Kodex vor dem katholischen Pfarrcr geschlosscn werden ungültig."

Two explanations may be given of the refugee's statement. He may erroneously hold the belief that such marriages are unlawful but valid, as some ill-instructed Catholics in this country may still believe, in spite of all the warnings given since the publication of *Ne Temere.* Or, what is more likely, the marriage invalidly attempted in a civil office was revalidated later

1 11 August, 1908; *SyHoge,* n. 12.
3 *De Matrimonio,* §1845.
» *SyHoge,* n. 177.
4 18 January, 1906; *Fontes,* n. 670.
6 Cf. Linncbom-Wenner, *Eherecbt,* p. 371 ; *Jus Pontificium,* 1930, pp. 26-36.

on by means of a *sanatio,* without the necessity of renewal of consent before parish priest and witnesses. There can be no doubt that German bishops enjoy this faculty', for use in certain cases, exactly as the English bishops do; an ill-instructed person could easily get the impression that the civil marriage was accepted as valid by the Church.

There remains, of course, the possibility of some fresh privilege or induit being recently accorded to Germany, but this is extremely unlikely.

311.—Marriage Form in Eastern Rites

Can a Catholic of some Eastern rite, who is dwelling in London, validly contract marriage with a non-Catholic before the civil registrar? In other words, what is the form, if any, which is required in such marriages under pain of invalidity?

From canon 1099, §1. 3, persons of an oriental rite are bound to observe our Western form of marriage, which requires the presence of a competent priest and witnesses, whenever they marry Latin Catholics. The marriage in the above case, therefore, does not require our canonical form.

As to the form that is strictly required for the validity of the contract, it is impossible to determine a general rule beyond stating that a Catholic of an Eastern rite must observe the canonical discipline proper to his rite. If this discipline contains what we used to call the diriment impediment of dandestinity, the marriage must be contracted before a priest of the rite. The difficulty arises from the number of these rites and the variety of discipline which governs them. Some have this impediment, which is regarded as diriment of marriage; others do not have it. The laws of the Eastern Churches are being codified at the present moment by the Holy Sec. A useful summary is given as an *Appendix* to Cappello's volume, *De Matrimonio,*[1] from which we gather that many of these bodies are bound cither by the Tridentine form, or by something equivalent in their own legislation, e.g., Copts, Ruthenians, Maronites. "Apud alias Ecclesias orientales, generaliter, neque ius tridentinum neque ius novum viget. Proinde ad valorem matrimonii nulla peculiaris forma iuridica requiritur; ad liceitatem vero servandae sunt publicae ceremoniae ab Ecclesia praescriptae." Cf. also *The Jurist,* 1944, p. 212; 1942, p. 399.

312.—Non-Catholic Form of Marriage

Granted that non-Catholics, contracting marriage amongst themselves, are not bound to the canonical form, are they bound to observe at least the civil formality or that form which is customary in the sect to which they belong?

Canon 1081, §1: Matrimonium facit partium consensus inter personas iure habiles . . .

Canon 1099, §2: . . . acatholici sive baptizati sive non-baptizati, si inter se contrahunt, nullibi tenentur ad catholicam matrimonii formam servandam; . . .

[1] Appendix I, §924.

(i) It is evident that the good of the family and of society requires that the marriages of non-Catholics should be regulated by some public authority, and, if the question is restricted to the marriages of unbaptized persons, there is now agreement amongst the authorities that the State is entitled, within the scope of the natural law, to determine that a certain form must be observed for the validity of the marriage contract. Otherwise, the persons not being subject to the law of the Church because unbaptized, their marriages would be subject to no authority whatever, which would be a menace to public peace and order.

decision of *Propaganda, zG* June, 1820, ruled that the non-observance by infidels of ceremonies regarded by the civil law' as necessary for validity rendered a marriage invalid; it was accompanied by a long instruction on the subject, explaining that in such cases the use of the Pauline Privilege was unnecessary, since the parties were free to marry: "Quare licet inter infideles verum sit matrimonium, illud tamen ad naturae et communitatis officium referri tantummodo potest, ac proinde a iure naturali et civili plane est moderandum. Sequitur hinc Principes saeculares, sive fideles sive infideles, plenissimam potestatem retinere in matrimonia subditorum infidelium, ht scilicet, appositis impedimentis, quae iuri naturali ac divino adversa non sint, eadem non solum quod ad civiles effectus, sed etiam quod ad coniugale vinculum penitus rescindant. . . . His ergo constitutis, iam vides quid sentiendum sit de matrimonio a viro infideli cum muliere infideli inito non servata ea caeremonia seu forma ac solemnitate, quae, sicut asseris, ad eius validatem ixuta Tunkini regni leges erat servanda. Porro huiusmodi coniunctio illegitima plane est, nec verum firmumque matrimonium inter eas personas efficere potest."[1]

(ii) But the matter is on an entirely different plane when it is a question of baptized non-Catholics in the Western Church. For the Church claims the exclusive right to determine what is necessary for the substance of such marriages, and the regulations of the State affect the marriages of baptized people only as regards the civil effects. The assertion of this right is contained implicitly within such canons as 1058, §2 and i960, and it is used expressly in laws which exempt baptized non-Catholics from observing the canonical form, or from being affected by the impediment of disparity of worship. All that is required, when they contract marriage, is true matrimonial consent externally expressed, and it is in itself a matter of indifference whether the consent is externally given before a civil official or before a non-Catholic minister.

Dr. Bohm, departing from this accepted doctrine, holds the view that the religious form of the sect to which the non-Catholics belong is necessary" for the validity of their marriages. But a writer in *Apollinaris* has no difficulty in showing that this position is untenable.[2] Such persons are in the same condition as Catholics were before the *Tametsi* decree of the Council of Trent, and if it is the practice of our ecclesiastical courts to accept proof of the marriages of non-Catholics from the register of a non-Catholic denomination, this is done because it establishes the exchange of external consent and not because the religious form is considered necessary.

The point is well stated in a Rota judgement, 27 May, 1924, *coram* Parrillo: "exinde consensus coram civili curione vel ministello protestantico

[1] *Fontes,* n. 4718.
[2] V. Dalpiaz in *Apollinaris,* 1936, p. 659.

mutuo expressus, validus praesumebatur non quidem ob formam civilem vel religiosam servatam, sed quia de facto praestiti consensus constabat . . . matrimonia civilia nequaquam valida sunt propter formam legemque civilem servatam, neque absolute et simpliciter, sed cum clausula: dummodo constet de mutuo eorum consensu, i.c. coniugum ad tramites iuris Decretalium".[1]

The above refers to Christians of the West. As regards those of Eastern rites, cf. Q. 311.

313.—Parochus Proprius

A nurse whose parental donsicile is in parish "A" was appointed on the permanent staff of a hospital in parish "B" with a fixed salary and apartments. She arranged to marry a man from parish "C". Before the marriage she sent in her resignation to the hospital and it was accepted. She returned to her parental home and was married in that parish after two days. The parish priest of "B" heard nothing of the marriage until it was over. Were his rights violated and is he entitled to claim the reliefsnentioned in canon 1097, §3 ?

Canon 1097, §1: Parochus vel loci Ordinarius matrimonio licite assistunt: i. Constito sibi de libero statu contrahentium ad normam juris; 2. Constito insuper de domicilio vel quasi-domicilio vel menstrua commoratione aut, si de vago agatur, actuali commoratione alterutrius contrahentis in loco matrimonii; 3. Habita, si conditiones deficiant de quibus n. 2, licentia parochi vel Ordinarii domicilii vel quasi domicilii aut menstruae commorationis alterutrius contrahentis, nisi vel de vagis actu itinerantibus res sit, qui nullibi commorationis sedem habent, vel gravis necessitas intercedat quae a licentia petenda excuset.

§2. In quolibet casu pro regula habeatur ut matrimonium coram sponsae parocho celebretur, nisi justa causa excuset. . . .

§3. Parochus qui sine licentia jure requisita matrimonio assistit, emolumenta stolae non facit sua, eaque proprio contrahentium parocho remittat.

The meaning of the canon is clear in its substance, except that a double species of "vagus" is introduced not mentioned in the definition of "vagus" in canon 91.2 The point raised could be decided with greater certainty if we had even more information. Was the lady under twenty-one ? Had she a residence anywhere else? Had the parish priest of "A" permission from the parish priest of "C" ? Was there grave necessity requiring the marriage to be performed in "A" ? Had she resided for six months in "B" or elsewhere ? We will suppose the answer to all these questions is in the negative.

(i) The parish priest of "B" appears to have no rights whatever over the marriage. The lady is "vaga" as in §1.2 of the canon. She has no domicile or quasi-domicile in "B" since she appears to have left the place "cum animo non revertendi" (canon 95). The only possible claim of the parish priest of "B" would arise if she had retained, up to the time of the marriage, a monthly dwelling in "B". It is a possible claim owing to the uncertainty of the law, but in this case it need not be considered, for the monthly dwelling in "B" has ceased: "Commoratio menstrua continuanda est usque ad

1 5.R. *Rotae Decisiones,* XVI, p. 151.
1 Cf. Michicls, *De Personis,* pp. 89, 174; Wcmz-Vidal, *Ius Canonicum,* V, §541.

momentum celebrationis matrimonii ita ut, si ante matrimonium interrupta fuerit, nullum jus parocho aut Ordinario conferat."[1]

(ii) The parish priest of "C" has certain rights with respect to the publication of banns (canon 1023). He is also "parochus proprius" of the bridegroom, and is competent to assist at the marriage or grant the necessary permission if required. It is clear that the right of the "parochus sponsae" is not strictly exclusive, and that the parish priest of either party is competent lawfully to assist at their marriage. The parties may choose whom they will out of many "parochi proprii". The only possible claim of the parish priest of "C" would arise if it is certain that the parish priest of "A" is not a "parochus proprius" of the bride.

(iii) It seems clear that the parish priest of "A" is "parochus proprius" because of the actual dwelling of the bride, who is "vaga", within his parish. There is, at least, no question of the penalty of §3, as De Smet clearly explains: "afficit parochis qui, extra gravis necessitatis causam, sine licentia assistcrunt matrimonio illorum quorum neuter habebat in parochia domicilium nec quasi-domicilium nec mensilem commorationem nec vagus actu commorabatur".[2]

The only person whose rights may have been violated is the Ordinary, whose intervention is required for the marriages of "vagi" according to canon 1032. But many commentators concede that the present case does not strictly come within the terms of this canon: "ex benigna interpretatione legislatoris ab illa excipi posse videntur *momentanee vagi,* illi nempe qui, nuper derelicto domicilio aut quasi-domicilio, in via sunt ut aliud occupent".[3]

314.—Parochus Sponsae

Canon 1097, §2, *requires marriage to be before the priest of the bride. If the parties for sufficient reasons desire to be married elsewhere, and not even before the parish priest of the bridegroom, is it necessary for the parish priest of the bride to give his permission expressly to a particular priest in a particular church? Or does it suffice simply to give the bride written permission to be married elsewhere? The latter method seems more satisfactory, since the priest designated by the former method might be prevented from assisting, or may himself require further permission from the rector of the church where the marriage is celebrated.*

Canon 1097, §1: Parochus autem vcl loci Ordinarius matrimonio licite assistunt . . . 2. Constito insuper de domicilio vel quasi-domicilio vel menstrua commoratione aut, si de vago agatur, actuali commoratione alterutrius contrahentis in loco matrimonii; 3. Habita, si conditiones deficiant de quibus n. 2, licentia parochi vcl Ordinarii domicilii, vcl quasi-domicilii aut menstruae commorationis alterutrius contrahentis, nisi vel de vagis actu itincrantibus res sit, qui nullibi commorationis sedem habent, vel gravis necessitas intercedat quae a licentia petenda excuset.

§2. In quolibet casu pro regula habeatur ut matrimonium coram sponsae parocho celebretur, nisi iusta causa excuset. . . .

(i) The permission—licentia—mentioned in the above canon must be

[1] Gaspard, *De Matrimonio,* §987.
[2] *De Matrimonio,* §145.
[3] De Smet, *op. at.,* §129; *Jus Pontificium,* 1926, p. 122.

completely distinguished from that in canons 1094, 1095, 1096, which is required for the validity of the marriage, and which is very clearly determined by the law. It does not follow, for example, that the law of canon 1096, "licentia dari expresse debet sacerdoti determinato ad matrimonium determinatum", must also be observed when it is a question of obtaining the permission of canon 1097. In this latter case, unless the local law determines differently, the permission may be obtained verbally or in writing by the parties or by a priest, expressly or by implication; the latter part of canon 1097, §1.3, mentions two cases in which it is not necessary to obtain it at all.

(ii) Assuming that it must be obtained, there may be considerable choice in selecting an Ordinary or parish priest who is competent to grant it: the Ordinary or parish priest of any place where cither of the parties have a domicile, a quasi-domicile or a monthly dwelling, are all equally competent. It should be noted that the law docs not strictly require permission—licentia—from the *parochus sponsae,* as such, if this permission has been obtained from any one of the many who may be competent, on various grounds, to grant it. If it is sought from the *parochus sponsae,* he grants permission—licentia—as the parish priest of one of the parties who have a domicile, quasi-domicile or monthly dwelling within his parish, and not strictly speaking as the bride's parish priest. It is the rule—"pro regula habeatur"—that the marriage should be celebrated before the parish priest of the bride, but any just cause suffices for the non-observance of the rule, and there is substantial agreement amongst the commentators that this "rule" is not, strictly speaking, a law, but a direction expressing what is usual, fitting and courteous; and that, in any case, it does not bind *sub gravi.*

Quite often, however, it will be found that the rights of the *parochus sponsae* are much more strictly and accurately determined by local legislation, as in Ireland.1

§6. CELEBRATION OF MARRIAGE

315.—Kneeling During Marriage Rite

Our "Ordo Administrandi" directs, at the opening of the rite, that the couple shall be standing, but give no further directions. The English Supplement of the "Rituale Romanum", however, directs the couple to kneel at the opening and, presumably, throughout. What is the correct procedure?

(i) The 1915 *Ordo Administrandi* is the only authoritative text for this country, in accordance with canons 733, §i,and 1100, in so far as the rites therein differ from those in the *Rituale Romanum* and have not been modified by the Holy See.

Recent editions of the *Rituale Romanum* are obtainable containing, as an Appendix, English use for rites such as marriage which, being based on the pre-Reformation Sarum use, are proper to this country. In the 1935

1 Cf. Gougnard, *De Matrimonio,* pp. 237-239.

Desclée edition of this Appendix we can discern no contradiction between its directions and those of the 1925 *Ordo Administrandi,* apart from the omission of section numerals. In both we read "Primo sacerdos sponsum, stantem ad dexteram mulieris, interroget . . But the rite for America, given in the same Appendix, is clearly at variance with ours: "virum et mulierem ante altare genuflexos . . . interroget"; it differs also in giving an abbreviated formula of the words: "With this ring I thee wed, etc."

The defect, if it may be so called, in the rubrics of our rite, is that there is no indication when the parties should kneel. One is free to hold, therefore, unless the point is ruled by custom, that they may stand throughout the rite. Fr. Dunne, in *Tbe Ritual Explained,* p. 151, whilst allowing for diversities of custom, recommends that they should remain standing until the versicle *Confirma hoc,* and that they should kneel during the nuptial or other blessing which may follow the marriage rite. We think that this is the usual practice.

The *Rituale Romanum,* Tit. vii, cap. ii, reads "ante altare genuflexos" as in the American use given in the Appendix. This apparent lack of liturgical precision is explained when we remember that the assistance of a priest was not, before the Council of Trent, a necessary' feature of the matrimonial consent. Accordingly various rites, with the use of the vernacular, are current in different places. The priestly function was essentially to give the nuptial blessing which always occurred during Mass, and it will be found, even after the Tridcntine decree when the priest's assistance was necessary, that the formula of marriage consent was observed at the door of the church, not at the altar.

(ii) /\re we free to adopt this new, 1925, rubric of the *Rituale Romanum,* if we so desire, as permitted by *S.R.C.,* 30 August, 1892, n. 3792.9, and 6 November, n. 4397.5? An answer involves principles of some interest, namely the application of customary law to liturgical rules, and the right of localities to retain the use of their own ceremonies which arc not those of the *Rituale Romanum,*

It is beyond all doubt that the distinctive portions of our marriage rite contained in the *Ordo Administrandi* have been customary' in this country', not only for the period of time mentioned in canon 5, but for many7 centuries previously; and they are contained therein because the pre-Reformation Sarum form of consent remained in use unchanged: the plighting of troth is identical with that given in the *Book of Common Brayer,* and in both books the parties are directed to stand.

It has, indeed, been maintained by some writers that against rubrical laws custom is of no avail. But there are many decisions of the *Congregation of Rites* which support local customs, and it cannot be denied that, in principle, liturgical law is subject to the canonical rules of canons 25-30. The most that can be said is that it is more difficult to admit custom in liturgical practice than in other matters.1

The Council of Trent, moreover, at the close of the famous *Tametsi* decree, Sess. XXIV, de Ref., cap. 1, earnestly desired the praiseworthy customs and ceremonies of various provinces to be continued in the celebration of marriage. A reference to the Council used to be contained in the rubric of the *Rituale Romanum* which now reads, n. 6: "Ceterum sicubi aliae laudabiles

1 Cf. Callcw.icrt, *Uturgicae Institutiones,* I, §i59; *Ephemerides Liturzieae,* 1929, p. 140.

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consuetudines et ceremoniae in celebrando Matrimonii Sacramento adhibentur, eas convenit retineri." T.R.C., io June, 1925, in approving the current (1925) typical edition of the book, orders all future editions to be printed in conformity with it; but neither this decree, nor any other, prohibits local ritual books. If, as it seems to us, the obligation of continuing the local use is traced to customary law rather than to any written precept of ecclesiastical authority, no argument of any weight can be drawn from the approbation of Pius V which still prefaces the book. It merely "urges" its adoption—"hortamur", and if we are to hold with Bouix that "hortamur" means "mandamus", there is no reason why the same meaning should not be given to "commendamus" in the episcopal approbation of the *Ordo.*[1]

S.R.C., n. 3792, *refers,* no doubt, to a local Ritual which, unlike our own, had not the support of custom. It seems to us that the clergy assisting at marriages in this country are bound to follow the *Ordo Administrandi',* the acceptance of the ruling in n. 3792 would mean that the English plighting of troth could be omitted, since it is not in the *Rituale Romanum;* but its omission would certainly cause consternation to the faithful who have been accustomed to it for centuries. They have similarly been accustomed to stand when exchanging their consent, and though the point is, relatively speaking, trivial, the rule should continue until it is changed by authority, as determined by canon 30.

The Holy See frequently directs local customs to conform to the rubrics of the *Rituale Romanian.* But, as regards standing whilst exchanging matrimonial consent, there has appeared no decree reprobating existing customs to the contrary; we have merely the words "ante altare genuflexos" added in the 1925 edition to the introductory rubric, a phrase which neither in its form nor in its context can be considered as abolishing our own custom of standing, which is clearly sanctioned by the rubric in the *Ordo Administrandi.*

Our conclusion must, therefore, be that priests may not, on their own authority, modify the local rites. It is for the bishops to do so, if they so desire, as indicated in *S.R.C.,* 6 November, 1925, n. 4397, ad V. The preference there recorded is not preceptive:

"Ex canone 1100 Codicis juris canonici, extra casum necessitatis, in Matrimonii celebratione servandi sunt ritus in libris ritualibus ab Ecclesia probatis praescripti aut laudabilibus consuetudinibus receptis. Hinc quaeritur:

(1). An in his regionibus Manuale Toletanum, quod passim in celebrando Matrimonio atque in administratione Ssmi Viatici et Extremae Unctionis adhibetur, sit praeceptivum ?

(2). Et, in casu affirmativo, an Ordinarii locorum ejus usui semel pro semper renuntiare valeant, ut ejus loco Rituale Romanum dehinc ab omnibus adhibeatur ?

Resp. Expedire ut adhibeatur Rituale Romanum, juxta Decreta in 3654, *Carthaginien.,* 16 februarii 1886, et n. 3792 ad IX, *Stri&onien.,* 30 august. 1892."

[1] Bouix, *De Jure IJ/nrgico,* p. 302. Cf. *Collationes Brngenses,* 1926, p. 414.

316.—Non-Catholic Witnesses

Is it absolutelyforbidden to tolerate non-Catbolics as witnesses at tbe weddings of Catholics ?

Difficulties concerning *communicatio in sacris* usually arise when Catholics wish to be present at non-Catholic rites. There is not the same objection in the case of non-Catholics assisting at Catholic rites, and the law in this respect tends to get milder. They may not receive sacraments but, from canon 1149, they may receive certain blessings, and far from forbidding non-Catholics to participate in our worship we rather encourage them to do so. There are numerous Roman decisions on individual cases, and the guiding principle is to avoid causing scandal, in the sense that people may possibly think that it matters little whether one is a member of the visible Church or not.

There is, of course, no question about the validity of the act, but merely of its lawfulness. The assisting priest should do his utmost to secure Catholic witnesses, but if he is unable to do so the presence of a non-Catholic may be tolerated for grave reasons and provided there is no scandal. In other matters the law excludes heretics absolutely, as in canon 765.2 which declares that a heretic cannot be god-parent at baptism, but no special qualifications are enumerated for the witnesses at marriage. A reply of the *Congregation of the Sacraments,* 13 March, 1910, with regard to the interpretation of *Ne Temere,* ruled that this document had introduced no changes in the existing law about the qualifications of witnesses: ad IV, "An possint adhiberi ut testes mali Christiani atque adeo pagani in ordine ad observandas praescriptiones art. II etc. ? *Resp.* Quod ad qualitates testium a decreto *Ne Temere* nihil esse immutatum." The existing law is in a decree of the *Holy Office,* 19 August, 1891: "Non esse adhibendos: posse tamcn ab Ordinario tolerari ex gravi causa, dummodo non adsit scandalum."[1] Noldin formulates the rule as follows: "illicite adhibentur testes acatholici, ubi catholici haberi possunt".[2] Prümmcr: "Accedente gravi causa et absente scandalo acatholici possunt esse testes in matrimonio catholicorum."[3]

317.—Marriage on Holy Saturday

There seems to be some variety ofopinion andpractice with regard to tbe celebration ofmarriage on Holy Saturday. What is tbe law ?

Canon 1108, §1 : Matrimonium quolibet anni tempore contrahi potesL

§2. Sollemnis tantum nuptiarum benedictio vetatur a prima dominica Adventus usque ad diem Nativitatis Domini inclusive, et a foria IV Cinerum usque ad dominicam Paschatis inclusive.

§3. Ordinarii tamen locorum possunt, salvis legibus liturgicis, etiam praedictis temporibus eam permittere ex iusta causa, monitis sponsis ut a nimia pompa abstineant.

[1] *Fontes,* n. 1144.
[2] *Tbeol. Moratis,* III, §643.
[3] *Tbeol. Moratis,* III, §525.

The variety of opinion and practice on the subject may be explained by the following considerations:

(i) In the common law of the Church it is not the marriage contract that is forbidden during certain holy seasons but the accompanying solemnities, and particularly the nuptial Mass and blessing. The reason for the prohibitionis that the festivities which accompany marriage are unfitting during penitential seasons, and at times, as Christmas and Easter Sunday, when the attention of the faithful should be wholly directed to spiritual things. It is a very ancient law of the Church, and is better appreciated by remembering that, before the Council of Trent, the intervention of a priest was not strictly necessary for a valid marriage; the consent, which is the sacrament, could be given *privately* without festivities, and afterwards the marriage was solemnized *coram ecclesia* with the Mass and nuptial blessing, the ceremonial leading of the bride to her husband's house, the blessing of the nuptial bed and other rites which have long fallen into abeyance. Marital cohabitation was not publicly sanctioned until after these external solemnities had been observed.1

But this ancient prohibition of external solemnities has continued to our own day, an age in which it seems that the purpose of the law would be better secured by prohibiting the marriage contract itself curing the forbidden times. The faithful preserve the spirit of the law by refraining from contracting marriage, even without the solemnities, during the forbidden times, but there is no law requiring them to do so. If desired, marriage may be contracted on Holy Saturday or at any other time during the forbidden season, but it must be celebrated without a nuptial Mass and blessing.

(ii) The local law in some districts used to supplement the common law by forbidding the contract itself during the forbidden times, but we know of no locality where this prohibition is still in force since the publication of the Code. It would seem to be abrogated by canons 6, n. 1, 1041 and 1108, §1.

(iii) Local Ordinaries, using the powers given them by canon 1108, §3, may permit even the *solemnisation* of marriage on Holy Saturday or on any other day during the forbidden season. In some dioceses, no doubt, the permission is readily given for appropriate reasons, whilst in others it may be refused.

318.—Ego Coniungo Vos

The form "Ego coniungo vos in matrimonium, etc." would appear to be an indication that the priest is the minister of the sacrament, which we know is not the case. Is it of very ancient use?

The formula in our *Ordo Administrandi* is the same as that in the *Rituale Romanum*. It was introduced about the beginning of the fifteenth century and replaced the more ancient ones: "Deus Abraham, Deus Isaac, Deus Jacob ipse vos coniungat, impleatque benedictionem in vobis" or "Benedicat vos Pater et Filius et Spiritus Sanctus qui trinus in numero et unus in Deitate vivit et regnat in saecula saeculorum."' The *Rituale Romanum*

1 Dc Smct, *De Matrimonio*. §200, n.2.
• *Dictionnaire de Droit Canonique*. i.v. *diction Nuptiale*. coL 377.

adds this rubric after the form *Ego coniungo,* etc.: "Vel aliis utatur verbis juxta receptum uniuscuiusque loci ritum," repeating the identical words of the Tridentinc decree *Tametsi.* It should be noted, therefore, that neither the Council nor the Ritual insists on this formula to the exclusion of all others, though wc can readily understand that the Tridentinc legislation requiring the presence of a priest favoured the *Ego coniungo,* etc., in the compilation of local rituals. It is really a simple blessing as distinct from the subsequent solemn nuptial blessing which is forbidden in certain cases. Our *Ordo Administrandi* has it and we must continue its use, explaining to the faithful, if necessary, that the priest is said to "join them in matrimony" in the sense that his presence, in every normal marriage, is an essential condition for their valid union.

319—Nuptial Blessing Within Sanctuary

Is there any certain ruling on the question whether the nrvly-wed at a nuptial Mass may enter the sanctuary in order to receive the nuptial blessing?

Missale Romanum, Missa Votiva pro Sponso et Sponsa: Dicto *Pater Noster,* sacerdos . . . stans in cornu epistolae versus Sponsum et Sponsam ante altare genuflexos, dicit super eos sequentes Orationes.

(i) There is no doubt whatever that, in principle, the laity should not enter the sanctuary during liturgical offices, and many decisions of the Holy See confirm this rule. Some rubricians apply it to the newly-wed at a nuptial Mass, and we have the highest doctrinal authority for this view in O'Connell, *Ceremonies of the Roman Rite,* p. 596, and *Celebration of Mass,* I, p. 90.

(ii) It is held by many, however, that the presence of the newly-wed within the sanctuary for the reception of the nuptial blessing is an exception to the usual rule, and other exceptions may be seen in the *Pontificale Romanum.* The exception is justified by the words of the rubric "super eos", for it is difficult to see how this direction can properly be observed in a church with a large sanctuary, unless the newly-wed arc kneeling at the altar. "Quoad sponsos, rubrica praecipit ut sint 'ante altare genuflcxi', ubi vero et qua distantia ab altari non dicit; sed facile intelligitur oportere non multum ab eo distare, ut celebrans possit commode et vere orationes 'super ipsos' recitare ipsique eum audire, postea vero aqua benedicta inspergi. lamvero ut haec fiant oportet sponsos esse altari proximos. Et reapse iuxta praxim acceptam sponsi iuxta altare, indifferenter intra vel extra presbyterii cancellos secundum opportunitatem et commodum, loco distincto collocari solent."[1] Many other authorities may be cited for this exception to the general rule: Dr. Long in *Irish Ecclesiastical Record,* January 1958, p. 82, quoting Martinucci-Menghini, De Amicis and others; *Ecclesiastical Review,* December 1935, p. 627; *l'Ami du Clergé,* 1913, p. 45 ; *Australian Catholic Record,* 1942, p. 55.

(iii) Our own preference is for the custom of introducing them within the sanctuary. It is clearly permitted by many writers, it is in accordance with the directions of the rubrics, and it is an added solemnity which many Catholic couples value very highly indeed. The only answer to the objection

[1] *Epbenttridts Liturpcae.* 1956, p. 68

that women arc not allowed within the sanctuary is to hold, with the writer in the *Ecclesiastical Review,* that the occasion of the nuptial blessing is "a remarkable exception to this strict law". There can, at least, be no doubt that the custom should be continued wherever it exists, even though it may be, in the strict rigour of the words, perhaps, *contra legem.* It was certainly the custom in this country before the Reformation, as may be seen in the directions of a Sarum Ritual printed at Douay, 1610: "Finitis orationibus ... et introductis illis in presbyterium (scilicet inter chorum et altare). . .

320.—Nuptial Blessing: Widows

May a widow or a widower bave a nuptial Mass for tbe second wedding, having already had one before ?

(i) The common liturgical law of the Church concerning nuptial Mass and blessing is contained in canons noi, 1102, §2, 1108 and 1143 of the Code; in the rubrics nn. 16-19 of the *Rituale Romannm,* Tit. vii, cap. 1, reformed in the current 1925 typical edition according to the prescriptions of the Code; in the Missal *Missa Votiva Pro Sponso et Sponsa* and in *Addit, et Variat.,* II, 2; finally, in various decisions of the *Congregation of Rates.*

A 'nuptial Mass' means cither a votive Mass *pro sponso et sponsa,* or, on days when the rubrics forbid a votive Mass, it means the Mass of the day with commemorations taken from the votive Mass. In this twofold sense of 'nuptial Mass' the principle is that Mass and blessing are so united that it is not permitted to have one without the other.

Nuptial Mass and blessing are forbidden when the parties have already received the blessing in a previous marriage. If a spinster is marrying a widower who has already received the blessing, nuptial Mass and blessing arc permitted only in places which have the custom, as in England; cf. *Ordo Administrandi,* Tit. vii, cap. i, n. 16. If a widow is marrying again, nuptial Mass and blessing are permitted only if she had not received it at her first wedding. The notion is that, once the blessing has been given, it remains, and to repeat it would be useless; but special favour is shown towards a woman who has never received it, since it is chiefly, though not exclusively, for her benefit.

If, for any of the reasons above mentioned, nuptial Mass and blessing are forbidden, the marriage rite between two Catholics may always be followed by a Mass of the day or a votive Mass, when rubrically permitted, excepting always the votive Mass *Pro Sponso et Sponsa.* In mixed marriages, the *Code Commission,* 10 November, 1925, interpreting canon 1102, §2, prohibited *any* Mass, if it might be regarded, in the circumstances, as a part or complement of the marriage rite.

(ii) Particular induits and legitimate local customs may modify very considerably the common law, as briefly explained above. The *Rifttale Romanum* in the appendix *De Matrimonio* contains two formulae which may be used by those who have the papal indult. The first is a form of nuptial blessing to be used when Mass is not said; the second is a form of blessing to be used when both parties are Catholics but the nuptial blessing forbidden, e.g. because of closed time or because it has already been received. Both

forms arc contained in our English *Ordo Administrandi,* since most dioceses have obtained the necessary indult.

Certain rituals, it is said, direct the prayer *Praetende, quaesumus,* which concludes the second formula, to be used after the *Pater Noster* in place of the blessing in the Missal. We can find no mention of this practice in any of the sources at our disposal. The ritual is, no doubt, a local one which preserves a lawful custom, as provided for in canon 5 of the Code. It is not the common law, nor is it contained in our own *Ordo Administrandi.* It would be unlawful to adopt it in places where the custom does not exist.

321.—Short Form of Nuptial Blessing

A parish priest, for his own convenience, prefers to give the nuptial blessing "extra Missam", and the parties are only vaguely aware of their right to a nuptial Mass. Are they entitled to it on a subsequent day, if they so desire, even though the nuptial blessing "extra Missam" bas already been received?

Canon 1101, §1: Parochus curet ut sponsi bcndictionem sollemnem accipiant, quae dari eis potest etiam postquam diu vixerint in matrimonio, sed solum in Missa, servata speciali rubrica et excepto tempore feriato. Cf. also *Rituale Romanum,* Tit. vii, cap. 1, n. 16.

Canon 1143: Mulier cui semel benedictio sollemnis data sit, nequit in subsequentibus nuptiis eam iterum accipere.

Addit, et Variat., II, 2: Haec porro benedictio nunquam dari potest . . . si uterque aut alteruter alias benedictionem acceperit. . . .

(i) Notwithstanding the indult or custom in this country of giving the nuptial blessing *extra Missam,* we think it is certain that parties who ask for a nuptial Mass are entitled to have it; it is the common law and persons are not bound to use an indult, which is a privilege, unless they so desire; cf. canon 69. A priest may not refuse a nuptial Mass unless the request is unreasonable, e.g. if it is desired at a time which is gravely inconvenient. He acts in accordance with the whole spirit of the liturgy by urging the faithful to be married with a nuptial Mass, but he cannot be accused of a breach of duty in not persuading them, unless local law places this obligation upon him, as it does, for example, in the *Liverpool Synod,* 1934, n. 164. For he could maintain, with great plausibility, that the indult is partly for his own benefit, and that he intends to avail himself of it.

(ii) The nuptial blessing may be received only once; it was received *extra Missam* in the above case and may not, therefore, be repeated. We cannot find any writer who discusses this point, but it seems quite obvious that, if it may not be repeated in a subsequent marriage, it is *afortiori* unlawful to give it twice in the same marriage. It is also against the rubrics to celebrate the votive Mass *pro Sponso et Sponsa,* even on days when any votive Mass is permitted, unless the nuptial blessing is to be given during the Mass. This may be deduced from the directions printed in the Missal before the Introit, and is noted by most of the writers, e.g. O'Connell, *Celebration of Mass,* I, p. 91; De Smet, *De Matrimonio,* §196; Paycn, *De Matrimonio,* §1874. The parties in the above case may have Mass said for their intention, but inasmuch as they cannot receive the nuptial blessing, it will differ in no way from any other Mass at which the faithful may assist.

(iii) Canon iio i, §i, binds everywhere, but the mode of its observance does not demand a nuptial Mass if an induit is in force permitting the blessing *extra Missam.* Thus, if a marriage takes place during the closed times, the parish priest must take care that the parties subsequently receive the nuptial blessing, but this law is observed if the blessing is given *extra Missam.* For the "solemnization" of marriage now means essentially the nuptial blessing, as in canon 110S, §2, which forbids its use during the closed times. But even the short form *extra Missam* is forbidden during these times, which goes to show, it would appear, that the blessing with the short form is "solemn" and therefore complies substantially with the requirements of canon 1 1oi, §i. Vermeersch, commenting upon the induit, writes in *Periodica,* 1923, p. 73: "Sollemnis benedictio extra missam exceptionem continet regulae c. h o t quae sollemnem benedictionem non permittit nisi intra missam."

(iv) The existence of the induit is admittedly unfavourable to the strong desire of many priests that the nuptial Mass should be the normal thing at all marriages. But we do not maintain that the short form is the *perfect* equivalent of the blessing in the Missal: the substance of what the Church gives is conferred by the short form, but the mode of its granting is more perfect when given during Mass. The use of the induit is at the choice or convenience of the parties or of the priest, subject to the directions of the local Ordinary. One is nevertheless completely justified in urging upon the faithful the desirability of having a nuptial Mass, even though there is no express direction from the Ordinary to that effect; for it is always advisable to take the better and more perfect course. We have no certain information as to the conditions of the rescript obtained for England. The one granted to Bruges, *Collationes Brngenses,* 1939, p. 153, is not conditioned, but the Ordinary requires an application on each occasion when the use of the short form is desired.

322.—Nuptial Blessing: Indult

When this blessing is given outside of Mass, a papal indult is requirea. May we assume that the requisite permission has been obtained for all priests in this country?

Rituale Romanum, Appendix De Matrimonio, I: ... si permittatur benedictio nuptialis, sed non dicatur Missa, sacerdos qui speciale indultum a Sancta Sede obtinuerit . . . dicit psalmum sequentem, etc.

Ordo Administrandi (London, 1831), Ritus Celebrandi Matrimonium: Nota, quod si locorum et temporum circumstantiae, ut apud nos non raro contingit, non admittunt ut Missa celebretur pro benedictione nuptiarum: orationes tamen et benedictiones supra positas, in primis nuptiis, omittendas non esse. The same rubric is in the 1891 edition.

(London, 1915): Alias, de speciali induito Sanctae Sedis, expleto ritu celebrandi Matrimonii Sacramentum, post orationem *Respice,* si non dicatur Missa, sacerdos . . . dicit psalmum sequentem, etc.

(i) The formula included now in the *Rituale Romanum* and in the English *Ordo Administrandi,* 1915» consists of Psalm 127, *Pater Noster,* etc., and two prayers resembling the ancient ones in the Missal but much shorter. This new formula was authorized by the *Congregation of Rites,* it March, 1914,

and duly appeared in the 1915 edition of our English book. It was published subsequently in various journals, e.g. *Periodica,* 1923, p. 71, and was included in the appendix to the 1925 typical edition of the *Rituale Romanum.*

(ii) Since the common law docs not permit the nuptial blessing to be given outside of Mass, an indult is necessary for the use of the form in the *Ritual,* and permission to enjoy this privilege is easily obtained: it is included in the formula of quinquennial faculties granted to Ordinaries in America, Formula IV, sub V, n. 5; or it may be conceded at an Ordinary's request as, for example, in the rescript printed in *Collationes Brugenses,* 1939, p. 152.

(iii) From the wording of the rubric in the 1915 *Ordo Administrandi,* we think that any priest is entitled to conclude that a papal indult has been obtained permitting the use of the new formula. Thus Dunne, *The Ritual Explained,* 1928, p. 133, and Slater, *Moral Theology,* 1925, II, p. 205, both inform us that the Holy See has granted this indult to England. Its existence, however, is doubted in some quarters, and the rubric is understood to mean that a priest may use the formula if the indult has been communicated to him, but not otherwise.

It is our opinion that the formula may lawfully be used even though it should transpire that no papal indult was obtained in 1914 or 1915. This view is based on canon 63, §§1 and 2: "Privilegia acquiri possunt non solum per directam concessionem competentis auctoritatis et per communicationem, sed etiam per legitimam consuetudinem aut prescriptioncm. Possessio centenaria vel immemorabilis inducit praesumptionem concessi privilegii." That we have a centenary custom of giving the nuptial blessing outside of Mass is established from the rubric in the book of 1831. It consisted in using the prayers of the nuptial blessing given in the Missal, a practice which was fairly common in other places as well; cf. *S.R.C.,* nn. 5016.1 and 2; 3079.2; 3380.1; 4232. The correctness of this was always rather dubious and it is no longer permitted. But it cannot be doubted that the form in our present *Ordo Administrandi,* 1915, is the lineal descendant of the older practice of reciting the Missal prayers: the substance of the privilege is the right to a nuptial blessing *extra Missam,* but the mode of imparting this blessing has changed with the introduction of a new formula in 1914.

323.—Nuptial Blessing on All Souls' Day

The rubric preceding the votive Mass "pro Sponso et Sponsa" directs that neither the Mass nor the solemn nuptial blessing is permitted on All Souls Day. Does this mean that All Souls' Day is to be added to the usual "closed times" when the solemnisation of marriage is forbidden?

The nuptial blessing in the form *extra Missam,* as contained in the appendix to the *Rituale Romanum* and in our *Ordo Administrandi,* for the use of those who enjoy the indult, may be given on All Souls' Day. The directions of some authors who appear to hold the contrat)' must be understood as applying to places which do not enjoy an indult, since in the common liturgical law the nuptial blessing is inseparable from Mass.

By "solemnization" of marriage is meant chiefly the nuptial blessing, which is forbidden always in the closed times unless permission is obtained from the Ordinary. But this permission is itself subject to the due

observance of the liturgical laws regarding the Mass to be said—"salvis legibus liturgicis".1 These liturgical laws are quite distinct from the law of "closed times", and in *Addit, et Variat.,* II, 2, they determine whether the nuptial Mass is to be the privileged votive Mass or the Mass of the day with commemorations from the votive Mass. Thus a nuptial Mass is permitted on Corpus Christi, but it must be the Mass of that day with the appropriate commemorations and blessings from the votive Mass.

All Souls' Day presents a special difficulty from the liturgical point of view, because in all Masses of the Dead commemorations of the living arc forbidden from *Rjibricae Generales,* VII, 6, and on that day any votive Mass is also forbidden. Therefore, the rubric preceding the votive Mass *pro Sponso et Sponsa* states that on All Souls' Day "et Missa votiva et solemnis benedictio nuptialis prohibentur", and this direction is printed in many diocesan directories on 2 November.

But it would be erroneous to suppose that in this context the words "solemnis benedictio nuptialis" refer to the form of nuptial blessing *extra Missam.* It is permitted on All Souls' Day in places which enjoy the induit as we do in this country, but the text of the rubrics takes no account of this induit, and therefore excludes the possibility of a nuptial blessing whenever the rubrics forbid adding the appropriate portions from the votive Mass to the Mass of the day. Similarly the rubric in *Addit, et Variat.,* II, 2, is considering the common law, not the induit: "Haec porro benedictio nunquam dari potest extra Missam, si tum Missa pro Sponsis, tum eius co Hill cmoratio, ideoque benedictio locum habere nequeat."

324.—Simple Marriage Blessing

May persons who have received the second blessing in the "Ordo Administrandi" (which one may call Esan's blessing), subsequently receive the nuptial blessingproperly so called (Jacob's) ?

A similar point discussed in Q. 321 refers to the short form of the nuptial blessing, permitted in England by induit.

I The second blessing, however, is not the nuptial blessing, in the above sense, as may be gathered from the title "Preces recitandae . . . quando benedictio nuptialis non permittitur".2 It may be used for the second marriages of widows whose first union was solemnly blessed, and during the closed times. Since it is clearly not the nuptial blessing, the repetition of which is in principle forbidden, there is no reason why the parties who have only received what is aptly called Esau's blessing should not subsequently have the nuptial blessing with Mass, or without Mass by using the induit.

325.—Priest as Civil Registrar

In certain parts of the missions, every accredited missionary is the civil registrar for marriages, and is required to assist not only at the marriages of Catholics but of heretics and infidels. Under what conditions may a priestfulfil this office ?

1 Canon 1108, §}.

* *Ordo Administrandi,* p. 207 ; *Ri/ttah Romania,* Appendix De Matrimonio, II.

(i) If by civil marriage is meant the legal form by which marriages secure their civil effects, the assistance of a priest thereat offers no particular difficulty, apart from the prohibition of the canon law, which can be removed by induit. He is in the same position as any Catholic who is a civil registrar.

But, as is evident, people will appear before him for whom it is not merely a question of the civil effects but of the bond and substance of marriage, and amongst them may be those who cannot marry validly owing to the bar of a diriment impediment, which may be of the natural law and therefore indispensable. If the registrar's assistance at such unions is to be regarded as intrinsically wrong, no reason will ever justify it. Whether it is intrinsically wrong or not is fully discussed by Cardinal Gasparri—"quaestio valde implexa"—in *De Matrimonio,* II, §1300, where it is demonstrated that the Holy Sec has never, strictly speaking, declared this action to be intrinsically wrong. It is clearly undesirable and likely to cause scandal and is permitted only for grave reasons.

(ii) The inconvenience and scandal, attendant on the fulfilment of this office by any Catholic, are increased when the civil registrar is a priest. He is forbidden by the law of canon 139, §2, to undertake an office of this kind without an apostolic induit: "Sine apostolico induito medicinam vel chirurgiam nc exerceant; tabelliones seu publicos notarios, nisi in Curia ecclesiastica, nc agant; officia publica, quae exercitium laicalis iurisdictionis vel administrationis secumferunt, nc assumant." An induit, if obtained, will define exactly the limits of what is permitted, and an instruction of the *Holy Office,* 25 July, 1917, repeated 29 July, 1922, indicates what the general tenor of these induits will be:

"Explorati iuris est non posse clericos sine apostolico induito officia publica quae exercitium laicalis iurisdictionis vel administrationis secum ferunt (canon 139, §2) ideoque nec munere fungi Officialis civilis ad matrimonia. Apostolico autem induito ad postremi huius muneris intercedente, cum eorum adsistentia validitatem matrimonii conferat in foro civili, dubitandum non est adsistentiam ipsam matrimoniis haereticorum et infidelium, generatim loquendo, adhuc manere illicitam si forte determinati alicuius matrimonii validitatem obstet impedimentum dirimens iuris naturae vel positivi divini, vel etiam ratione scandali. Siquidem igitur huiusmodi apostolicum indultum ratio boni publici Missionariis impertiendum suadeat, nihil prohibet quominus per Sacram Congregationem de Propaganda Fide Vicariis Apostolicis illud implorantibus concedatur, dummodo tamen:

(i) Nullum matrimonio obstet impedimentum dirimens iuris naturalis vel divini.

(ii) Nulla in pactum deducatur conditio matrimonii substantiae repugnans.

(iii) Nulla actui civili haeretica aut superstitiosa caeremonia adiungatur.

(iv) Nullum, demum, adsit scandalum vel periculum fovendi indifferentismum religiosum."[1]

326.—Marriage Register

When registering a marriage, is it sufficient to enter only the names of the fathers of bride and bridegroom, which incidentally is all that is necessary on the civil register?

[1] *SyHoge,* n. 60.

Canon 1103, §1: . . . describat in libro matrimoniorum nomina coniugum ac testium . . . secundum modum in libris ritualibus et a proprio Ordinario praescriptum.

Ordo Administrandi, Tit. xiii, cap. iv: (exemplar) Anno 1855 die 13 mensis Mail, Rev. N. N. in Matrimonio coniunxit loannem Woodward (talis loci) filium Georgii Woodward et Annam Sharpies (talis loci) filiam Edwardi Sharpies . . .

The form given in our *Ordo Administrandi,* similar in this respect to that of the *Rituale Romanum,* Tit. xii, cap. iv, requires only the names of the fathers of the married couple to be entered in the register, and we can trace no legislation for the whole country, whether in the Provincial Synods or elsewhere, directing their mothers' names to be entered as well. Therefore, failing any diocesan regulation to the contrary, this alone suffices.

The common law takes for granted, in this canon and elsewhere, that local law will amplify and make more precise what is required by the common law. The marriage register often contains a space for both parents of each party, provided by the compiler of the book, perhaps on analogy with the baptismal register, which, in this country, requires both to be entered. This type of register may be sanctioned by the Ordinary for his diocese, in which case an entry of the names of both parents is obligatory.

When notification of marriage is sent to the parish of Baptism, in compliance with the law of canon 1103, §2, the Holy See has directed that it shall contain, amongst other particulars, "coniugum eorumque parentum nomina et agnomina",1 a phrase which does not necessarily mean the names of both parents of each party. The Instruction on marriage preliminaries2 contains a formula for curial use in proving freedom to marry which does explicitly require the names of both parents of each party, but it cannot be argued from this formula that the names of both are to be entered in the marriage register. Accordingly, our opinion is that, unless local law requires the names of both, it suffices to register the fathers' names alone as directed by our *Ordo Administrandi.*

§7. REVALIDATION OF MARRIAGE

327.—Revalidation: Abrogated Impediment

Titius and Bertha, man and wife, are about to be reconciled to the Cburcb. Titius has been baptised and is a member of the Church of England. Bertha is a Baptist and has definitely never been baptised. Their marriage took place before the Code and was, at that time, invalid. What must be done by the priest who receives them into the Church ? Some authors seem to direct that the marriage must be revalidated 'forma consueta" ; others seem to require merely an internal renewal of consent.

Canon 10: Leges respiciunt futura non praeterita, nisi nominatim tn eis de praeteritis caveatur.

Canon 1135, §1: Ad convalidandum matrimonium irritum ob impedi-»

l *S.C. Sacrum,* 4 July, 192:.
I *Ibid.,* 29 June, 1941.

mentum dirimens, requiritur ut cesset vel dispensetur impedimentum et consensum renovet saltem pars impedimenti conscius.

§2 Haec renovatio iure ecclesiastico requiritur ad validitatem, etiamsi initio utraque pars consensum praestiterit nec postea revocaverit.

Canon 1134: Renovatio consensus debet esse novus actus voluntatis in matrimonium quod constet ab initio nullum fuisse.

Canon 1135, §1: Si impedimentum sit publicum, consensus ab utraque parte renovandus est forma jure praescripta.

Code Commission, z and 3 June, 1918, ad 6: Vis novi Codicis estne retroactiva in his quae modificantur circa sponsalia et impedimenta tam impedientia quam dirimentia matrimonium, ita ut quodlibet ius acquisitum vigore sponsalium validorum nullimode possit reclamari, nisi in quantum novus Codex concedit, et contracta impedimenta modificata a novo Codice nulla dispensatione indigeant ? *Kesp.*: Codici, etiam quod ad sponsalia et impedimenta, non esse vim retroactivam: sponsalia autem et matrimonialia regi jure vigenti quando contracta sunt vel contrahentur, salvo tamen, quod ad actionem ex sponsalibus, canone 1017, §3.

Ad 7: Quid dicendum de matrimoniis, si quae nulla sint ex capite impedimentorum a novo Codice abrogatorum: fiuntne matrimonia illa valida ipsa promulgatione novi Codicis, vel etiam post dictam promulgationem indigent dispensatione, sanatione, etc.? Rzr/>.: Negative ad primam partem, affirmative ad secundum.

This reply gave rise to much discussion as it appeared to direct that, in such a case as we arc discussing, a dispensation was needed even though the impediment had been abrogated. Therefore a further private elucidation of the point was obtained from Cardinal Gasparri and printed in *Periodica,* 1920, p. 154: "Utrum responsum Commissionis ad Codicis canones authentice interpretandos, datum 2-3 Jun. 1919, sub n. 7, dum in fine apposuit illud 'etc', intelligendum sit ita ut dispensatione vel sanatione eiusmodi matrimonia semper indigeant, an potius convalidari etiam possint ad normam c. 1133, §1, et 1135 ? Responsum est a Card. Praeside: In dubio de quo agitur (et quod mansit sicut oblatum est ab Episcopo Meletensi) non legitur verbum *semper·,* et istud 'etc.' definite significat matrimonia illa convalidanda esse ad normam c. 1133 seq."

• The impediment between a baptized non-Catholic and a non-baptized person no longer exists, but a marriage contracted with a pre-Code impediment is not *ipso facto* convalidated by the abrogation of the impediment; it needs convalidation by the parties renewing their consent, and this renewal of consent must be with the legal form if the impediment is public. If it were a question of convalidating the marriage of two Catholics (invalid, let us suppose, because of an impediment of relationship since abrogated) it would be necessary for them to renew their consent before a parish priest and two witnesses, and the same must be said if only one of the parties were a Catholic.

But if both parties are non-Catholics, and therefore not bound to the observance of the *Ne Temere* decree, the question arises how they can renew their consent "forma jure praescripta". A full discussion of this point in *Apollinaris,* 1953, p. 360, just fails to meet this point; the writer argues that conjugal intercourse, with knowledge of the previous invalidity of the marriage, is equivalent to renewal of consent in the case of a marriage which was invalid because of an occult impediment. But what if the impediment,

as in our case, is public ? Gasparri gives a solution in discussing a similar case of the impediment of "age" ceasing with course of time. "Titius et Sempronia, acatholici baptizati, coram magistratu civili matrimonium contraxerunt nullum jure canonico non autem jure civili ob impedimentum aetatis ex parte mulieris: tractu temporis impedimentum cessavit, ct modo conjuges, de conversione ad Catholicam Ecclesiam cogitantes, volunt matrimonium convalidare: ad quid tenentur ? Non est necessaria dispensatio ab impedimento, quia hoc jam cessavit; tenentur ad renovationem consensus, quia utraque pars est baptizata; non tenentur consensum renovare in forma canonica substantiali, quia haec cos non obligat; igitur satis est ut consensum renovent modo externo privato ... id est, sine parocho et testibus, seu sine forma sive substantiali sive accidentali jure praescripta. . . sufficit igitur ut partes sibimet dicant: *tu es mea uxor, tu es meus maritus,* et matrimonium convalidatum est."1 Other authors we have consulted do not advert to the difficulty of this case. For the rest, if the parish priest receiving these converts wishes to secure the validity of the marriage beyond all cavil, it is a simple matter to get the two parties to renew their consent before him and witnesses immediately after their reception into the Church.

328.—Revalidation: Converts' Marriages

Converts being received into the Church are baptised conditionally., but usually there is no investigation whatever about the validity of marriage contracted whilst they were non-Catholics. Is this in order ?

Since marriage enjoys the favour of law, as stated in canon 1014, it can usually be assumed that the marriages of converts arc valid; they are ratified (become sacramental contracts) either at the time they were celebrated, if the parties were then baptized, or at the time of the conditional Baptism of the converts, since non-Catholics when marrying amongst themselves are not bound by the canonical form. It is true, nevertheless, that occasionally, the marriage is invalid, and, though the parties may be ignorant of this fact and therefore in good faith, convalidation is necessary when its invalidity is detected. Normally it would seem that the course of instruction which precedes reception into the Church should bring to notice any defect in the marriage.

If both parties are unbaptized they are bound only by the impediments of natural or divine law and, according to most canonists, by the form of marriage required by the State for the validity of the contract.

If baptized, they arc bound by all the impediments of ecclesiastical law, except, since the promulgation of the Code, 19 May, 1918, disparity of worship. Also, if an impediment is detected, they arc bound by the ecclesiastical law which requires renewal of consent in some form or other (canon 1134) whenever the marriage is convalidated by the ordinary method. Accordingly the priest will convalidate the marriages of these converts, immediately the defect is discovered, exactly as he would in the case of baptized Catholics. It should be noticed that if the diriment impediment has ceased to exist, e.g. *ligamen,* owing to the death of the partner in a

1 Dr *Matrimonio,* II, §1198.

former marriage, renewal of consent is still required for convalidation. Cf. Q. 327.

It is not the common practice, unfortunately, to give the nuptiai blessing to converts who arc competent to receive it. But we may observe tnat the law permits the nuptial Mass and blessing to be given at any time after the marriage "etiam postquam diu vixerint in matrimonio" (canon not, §1), and it seems most desirable to take advantage of this law, provided the parties and the faithful understand that it is not a marriage which is

329.—Petition for Sanatio

Could a priest rightly apply for a "sanatio" in favour of two parties in a mixed marriage, neither of whom are subjects of the Ordinary to whom the petition will be addressed, but who are living for the time being within bis territory without acquiring even a quasi-domicile therein ?

(i) If the parties have nowhere a domicile or quasi-domicile (canon 92) they arc subject as *vagi* to the Ordinary of the place where they are actually staying (canon 94, §2), and the petition is lawfully presented to him.

If the parties have elsewhere a domicile or quasi-domicile they arc subjects of the Ordinaries of these places, and arc *peregrini* in the place where they arc actually staying (canon 91). Provided mention is made of former refusal by the proper Ordinary, we think that a petition may lawfully be addressed to the Ordinary of this place, who will use his discretion in rejecting or granting it in accordance with the terms of his own faculties. It is, indeed, in some dispute whether the only competent Ordinary for marriage dispensations is the proper Ordinary of the parties, but it can be held with probability that, in principle, *peregrini* may validly and lawfully be dispensed by the Ordinary or the place in which they arc staying. Cf. d'Angclo in *Apollinaris,* 1928, p. 255; Van Hove, *De Privilegiis et Dispensationibus,* §433; Vromant, *Normae Generales,* §199.

(ii) This view is supported by the terms of the quinquennial faculties which may be seen in Bestc, *Introductio in Codicem* (1938), Appendix I: "Sanandi in radice matrimonia attentata coram officiali civili vel ministro acatholico a suis subditis etiam extra territorium, aut non subditis, intra limites proprii tcritorii. . . ." Woywod, in *Canonical Decisions of the Holy See,* 1933, P· 146, gives the following English version: "To validate marriages by the *sanatio in radice,* when marriage had been attempted before a civil magistrate or a non-Catholic minister by his subjects (even if they thus married outside his diocese), or by non-subjects if they attempted marriage in his diocese . . ." The formulae of these faculties vary in different places, and it may be that the original of Woywod's version differs from the text given by Beste and others; it is clear that the English version in Woywod limits the Ordinary's power to the marriages of *peregrini* which have been attempted in his diocese. A correct version of the Latin phrase, which we believe is that contained in the formula enjoyed in this country, is given by Bouscarcn, *Digest,* II, p. 8: "To grant a *sanatio in radice* for marriages that have been attempted before a civil officer or a non-Catholic minister, cither in the case of their own subjects even outside their territory, or of other persons within it .

If this interpretation is correct, the faculty in question, which is issued by the *Holy Office,* will have the same extent as those given by the *Congregation of the Sacraments'.* "Ordinarius recensitis facultatibus ... uti poterit in matrimoniis contrahendis et nullitcr contractis cum suis subditis ubique commorantibus et aliis omnibus in proprio territorio actu degentibus. . . ." Similar wording is used by the *Holy Office* in the faculty for dispensing (not *sanatio')* from mixed religion and disparity of worship: "Dispensandi . . . cum subditis etiam extra territorium, aut non subditis intra limites proprii territorii. . . ." These are the formulae given by Beste, *loc. cit.,* and *Collationes Brngenses,* 1933, p. 165. There would seem to be no good reason for giving to the text issued by the *Holy Office* for *sanatio* a more restricted meaning than that issued for other purposes and by other Congregations; some canonists, accordingly, such as Linneborn-Wcnner, *Grundriss des Eherechts,* 1953, p. 165, take for granted that in each the extent of the faculty is the same.

(iii) Therefore, in our view, the petition may lawfully be directed to the Ordinary of the place in which the parties are at the moment living as *peregrini.* This Ordinary may, however, take the stricter view about the meaning of his faculties; or, for any other reasons which seem to him good, he may decline to grant the petition. In this case recourse must be had to the proper Ordinary of the parties.

330.—Execution of Sanatio

In one diocese it is the opinion that a "sanatio" takes effect, i.e. the marriage is convalidated, from the date on which the document is issued from the curia. In a neighbouring diocese it is held to take effect from the moment it is communicated to the parties by the priest. What is the explanation?

Canon 38: Rescripta quibus gratia conceditur sine interiecto exsecutore, effectum habent a momento quo datae sunt litterae; cetera a tempore executionis.

Canon 1138, §1: Matrimonii in radice sanatio est eiusdem convalidatio, sccumfercns, praeter dispensationem vel cessationem impedimenti, dispensationem a lege de renovando consensu, et rctrotractionem, per fictionem iuris, circa effectus canonicos, ad praeteritum.

§2. Convalidatio fit a momento concessionis gratiae; retrotractio vero intelligitur facta ad matrimonii initium, nisi aliud expresse caveatur.

This method of convalidating marriages is resorted to only for grave reasons, when the invalid marriage cannot be put right in the usual way by dispensing an impediment and renewing consent. It can be granted by the Holy See alone, but Ordinaries usually possess delegated power to grant a *sanatio* in certain well-defined cases.

If the rescripts received from the curia are carefully read they will be seen to contain phrases which explain the difference which puzzles many, for the curial practice is not uniform throughout this country.

(i) A rescript granting *sanatio* "in forma gratiosa", after narrating the Ordinary's power received from the Holy See, the nature of the impediment dispensed, and the *proviso* that the original marriage consent is still continuing, will contain some phrase such as: "Ordinarius N.N. in radice

sanat ac rcvalidat matrimonium inter N & N" or "Sanamus m radice matrimonium inter N & N" The rescript will then instruct the priest to whom it is addressed to inform the parties of this fact, and usually a penance is imposed upon them, e.g. the recitation of certain prayers for a fortnight. When the Ordinary sends the rescript in this form, the *sanatio* is effected from the moment of its issue; all the preliminaries have been previously observed, e.g. the guarantees in mixed religion obtained, and the priest is merely the channel by which a notification is conveyed to the parties.

(ii) A rescript granting *sanatio* "in forma commissoria" entrusts or commits to the priest addressed the power to revalidate the marriage by executing the dispensation, and it will contain some such phrase as: "Ordinarius N.N. vigore facultatum Nobis tributarum, R. Dominum parochum N.N. deputat ut matrimonium inter N & N in radice sanat dummodo . . ." (various clauses or conditions to be first verified). Sent in this form, the *sanatio* is effected from the moment it is executed by the priest to whom it is addressed.

Thus Cappello, *De Matrimonio,* §280: "Dispensatio in forma gratiosa valet a momento concessionis; in forma commissoria effectum non sortitur ante exsecutionem. . . . Proinde si dispensatio conceditur in forma commissoria, causae verae esse debent tempore exsecutionis; si conceditur in forma gratiosa, contra, tempore concessionis scilicet eo momento quo rescriptum vel a S. Sede vel ab Ordinario conceditur"

331.—Sanatio and Marriage Consummation

For a marriage io be absolutely indissoluble is consummation necessary after its convalidation by "sanatio" ?

The question, put in other words, is whether the papal power of dissolving a non-consummatcd marriage is applicable in the case of a marriage revalidated by *sanatio.* We cannot find the point explicitly settled by any of the commentators since, in practice, people are granted a *sanatio* because they wish to continue their marital intercourse. The case, however, is not inconceivable, where a *sanatio* has been unreflectingly obtained in circumstances which seemed to require rather a declaration of nullity. If the same circumstances arc continuing after the *sanatio* and before consequent consummation, may the papal power be invoked ?

In the past some extraordinary theories were current concerning the effect of a *sanatio,* a few canonists holding the view that the marriage obtained its sacramental status not merely from the time of its revalidation (ex nunc) but from the beginning (ex tunc). "Opinio canonistarum qui valorem matrimonii *ex tunc* statuunt erroneam prorsus notionem imo inexplicabilem sanationis in radice tradit. Bcned. XIV, Const. *Qtnem Semper,* 27 September, 1755. Planum est etiam sacramentum *ex nunc* incipicre."[1]

It is now perfectly clear from canon 113S that, although the canonical effects arc by a legal fiction reckoned from the beginning of the union (ex tunc), the marriage is revalidated only from the moment (ex nunc) of the

[1] Chrlodi, *Jus Matrimoniale,* p. 207, n. i.

grant of a *sanatio:* "§r. Matrimonii in radice sanatio est eiusdem convalidatio, sccumfcrens, practer dispensationem vel cessationem impedimenti, dispensationem a lege de renovando consensu, ct retrotractioncm, per fictionem iuris, circa effectus canonicos, ad praeteritum. §2. Convalidatio fit a momento concessionis gratiae."

There is, accordingly, no reason why a papal dissolution could not be obtained in a case where a marriage convalidated by *sanatio* is not subsequently consummated. Whether it is the practice of the I loly See to dissolve such marriages is a matter about which we have no information.

332.—Revalidation: Civil Registrar

The civil registrar declined to attend at the revalidation of a mixed marriage which had been attempted in a Protestant church; in his view the marriage in the Protestant church was civilly valid and the State had no further interest in it. What should a parish priest do in these circumstances?

(i) If a priest desires to revalidate the marriage by renewing the consent of the parties with the canonical form, it is held that he would be liable to prosecution by assisting at the marriage without the intervention of a registrar, in cases of marriage attempted in a Protestant church. Civil marriages in a register office are in a different category and may be revalidated without any further civil formality. We have heard of several instances in different parts of the country where the registrar was ignorant of this distinction, as well he might be; it is a strictly correct interpretation of the law which was not perceived by anyone up to a short time ago. He can be brought to attend, either by persuading him that it is his duty to do so, or by applying to his superintendent.

(ii) Actually, the simplest method is to apply to the Ordinary for a *sanatio* in all marriages of this kind, having first obtained the usual guarantees required for mixed marriages.

333.—Registration of Revalidated Marriages

A marriage attempted by two Catholics in a register office and afterwards civilly divorced may be declared invalid by the summary process of canon 1990. *Similarly, marriages which are invalid owing to certain diriment impediments not being dispensed. But how is one to become assured that a marriage of this kind has not been convalidated, for the parties may conceal the fact in bad faith, and tbe revalidation is frequently not entered in any registers?*

The summary process of canon 1990, and the even more summary process of art. 231 of the Instruction of the *Congregation of the Sacraments,* 15 August, 1956, may not be used if doubt arises whether the marriage has been convalidated, and the *defensor vinculi* intervenes in the process of canon 1990 precisely for this purpose.

It is the duty of the parish priest who investigates the freedom of either of the parties contracting a marriage, subsequent to the first being declared invalid, to observe the law which requires a recent baptismal certificate to be

produced. This document should contain, amongst other details, the fact of the marriage being convalidated; so that, in the unlikely event of the diocesan curia being misled into issuing a summary declaration of nullity, it will transpire that the parties are nevertheless not free to marry. If, as our correspondent states, revalidation is not entered in some register, this is a grave breach of duty on the part of the priest who revalidated the marriage.

The law on registering marriages, contained in canon 1103, certainly applies to all revalidations, except in those rare instances when the whole process is for the internal sacramental forum alone. The canon requires, moreover, the entry of such details as are prescribed in the ritual books; *Rituale Romanum,* Tit. xii, cap. iv, and the *Ordo Administrandi,* p. 287, contain the *formulae* to be used when a dispensation has been obtained. Cf. also canon 1046. In all cases where the invalidity of a marriage is public, whether because of a diriment impediment (canon 1135, §1), or because of defective consent (canon 1136, §5), or because of the non-observance of the form (canon 1137), it is necessary publicly to renew consent with the prescribed form, and the assisting parish priest or delegate can hardly fail, on such occasions, to complete the process by making the usual entries in the appropriate books.

A revalidation by *sanatio,* except when given for the internal sacramental forum alone, is subject to the same rule requiring registration, for the marriage is not celebrated ("celebrato matrimonio", canon 1103) until the *sanatio* is executed. Accordingly, there will usually be found, in the episcopal rescript granting a *sanatio,* a clause directing the priest to inscribe the fact in the registers. Even if there is no such clause, inscription is of grave obligation. Its necessity is noted by the writers, as Wernz-Vidal, *Ius Canonicum,* V, §563, and Cappello, *De Matrimonio,* §718, 8, but the obligation is very frequently modified in local legislation.

The appropriate registers to which reference has been made arc, firstly, the matrimonial register from canon 1103, §1; secondly, the baptismal register of the place of Baptism from canon 1103, §2; thirdly, in rare cases, the curial register for marriages of conscience from canon 1107.

§8. MARRIAGE CAUSES

334.—Indissolubility of Marriage

*The papal address printed in "The Clergy Review", **XXII,*** 1942,/». 86, *states that certain marriages, though intrinsically indissoluble, do not possess an absolute extrinsic indissolubility. Wbat is the difference between intrinsic and extrinsic in this connexion ?*

Some writers use the word "intrinsic" to qualify the indissolubility of all marriages, in the sense that it is a property which belongs to them from the natural law, and from this fact they argue against the power claimed by the State to grant a divorce. Cf. Chretien, *De Matrimonio,* §46. To explain derogations from the law of indissolubility, whether in the Old or the New Testament, they have recourse to the familiar distinction between primary

and secondary precepts of the natural law: the Author of the natural law permits secondary derogations, e.g. Pauline privilege or papal dissolution of a non-consummatcd marriage, and the marriages so affected are therefore "extrinsically" dissoluble by reason of their subjection to a divinely bestowed external authority.

There is nothing wrong with the doctrine thus explained, but wc believe that the exact connotation of the terms "intrinsic" and "extrinsic", as applied to indissolubility, has a simpler and clearer meaning: marriage is intrinsically indissoluble in the sense that it cannot be dissolved by an internal cause, i.e. the parties cannot themselves by their own mutual consent dissolve the bond which their own consent has created. If, in addition, it could be asserted that no marriage whatever is dissoluble even by positive law or by a divinely constituted authority, it would follow that all marriages are not only intrinsically but also extrinsically indissoluble. This, however, cannot be asserted: there was the Bill of Divorce in the Old Testament, and in the New there are the Pauline Privilege and the power enjoyed by the Pope in dissolving non-consummatcd marriages.

The few well-defined exceptions serve to emphasize with perfect clarity the principle of canon 1118: "Matrimonium validum ratum et consummatum nulla humana potestate nullaque causa, praeterquam morte, dissolvi potest", a doctrine which may be expressed either by saying that these marriages are absolutely indissoluble, or that they are indissoluble both intrinsically and extrinsically. Cf. Davis, *Moral Theology,* IV, p. 59; Cappello, *De Sacramentis,* III, §45; Wernz-Vidal, *Ius Canonicam,* V, §623; Payen, *De Matrimonio,* I, §93.

From canon 1013, §2, *the indissolubility of Christian marriage has a special firmness because of the sacrament. A marriage which is merely ratified is a sacrament but it can be dissolved by the Holy See·, whence, then, is derived the absolute indissolubility of these marriages?*

It may be said, from the purely speculative point of view, that God, had He so wished, could have provided for the extrinsic dissolubility even of a ratified and consummated marriage between two Christians. That He has not done so is the Catholic doctrine, notwithstanding the difficult text in Matthew xix. The theologians, and canonists also to some extent, naturally try to discover the inner reason for this discipline,[1] a reason which must be sought not in something common to all marriages, such as *bonum prolis,* but in what is proper to the marriages of Christians. Christian marriage is, by Christ's institution, a grace-causing sign, one of the seven sacraments; but one cannot easily perceive in the notion of an efficient instrumental external sign of grace the inner reason why the marriage of two Christians is extrinsically indissoluble; moreover, it is not as a matter of fact indissoluble, even though a sacrament, until it has been consummated. The reason, therefore, is to be sought, it would seem, in its nature as a sacrament, in the wider meaning of the term, as used by St. Paul in Enhes. v, 25-32, namely, in its signification of the union between Christ and the Church, "which union, as long as Christ shall live and the Church through Him, can never be dissolved

[1] *Cf. Summa Thiol.*9 Sunpl. 67» i, ad 2; Prümmcr, *Thiol. Moralis,* III, §664; Wcrnz-VidaL *lus Canonicum*^ V, §625, n. 52.

by any separation'.*1 Evidently this mysterious and wholly spiritual signification is not perfectly established until baptized parties become two in one flesh.

It will be observed that the "sacramental" Pauline text is used in *Casti Connubii* in the section dealing with the indissolubility of marriage; the nature and effects of marriage as a sign of grace are treated quite separately. The words of canon 1013, §2: "peculiarem obtinent firmitatem ratione sacramenti" are best interpreted, therefore, if the word "sacrament" is understood exclusively in the sense used by St. Paul in Ephes, v, 25-52, a view defended by Dr. Jelicic as summarized in *Jus Pontificium,* XVI, 1936, p. 324: "Matrimonium Christianum non est absolute indissolubile ob sacramentum ut signum efficax gratiae, sed in quantum est signum perfectae coniunctionis Christi et Ecclesiae. Verba can. 1013, §2, hoc modo intelligenda sunt."

335.—Papal Dissolution of Legitimate Marriage

The English translation of Cardinal GasparrPs Catechism contains the following text in a note on page 193: "(r) *In the case of a marriage contracted between a believer and an unbeliever with a dispensation from the impediment arising from disparity of worship (in other words between a baptised and an trnbapti^ed person), then'. (/) such a marriage is not dissolved by the Pauline privilege,' but (ii) if not consummated it can be dissolved by solemn religions profession and by a dispensation granted by the Apostolic See\ (Hi) if consummated it can be dissolved by a papal dispensation." How is the statement under (Hi) harmonised with canon* 1118 *and canon* 1120, §2 ?

(i) Canon 1120, §2, is not contradicted by the above text: "Hoc privilegium non obtinet in matrimonio inter partem baptizatam et partem non baptizatam cum dispensatione ab impedimento disparitatis cultus." The law states that the Pauline privilege cannot be applied in this case, but the Catechism text refers to papal dissolution. The Pauline privilege usually requires no special intervention of the Pope and is capable of the widest interpretation, whereas a papal dissolution is a very special act of the Sovereign Pontiff, and the circumstances and reasons arc carefully weighed before it is granted. It is true that, from the point of view of the persons seeking a dissolution, in order to contract a fresh union, it is a purely academic point whether the first marriage is dissolved by the Pope, or by their subsequent marriage, after complying with the conditions of the Pauline privilege. Nevertheless, there is no contradiction between the canon and the Catechism on this point.

(ii) Canon 1118 states: "Matrimonium validum ratum et consummatum nulla humana potestate nullaque de causa praeterquam morte, dissolvi potest." The important word here is "ratum" which is defined in canon 1015 : "Matrimonium baptizatorum validum dicitur ratum. . . ." It is explained by De Smet: "Ratum dicitur matrimonium, seu firmum, quod valide et sacramentalitcr est initum inter duos baptizatos, vel initum inter infideles et post utriusque Baptisma sacramentum effectum, *vel etiam, proba-*

1 Casti Cennubii, C.T.S., p. 17; new tr. n. 35.

biliter saltem, qnod est cum dispensatione celebratum inter pariem fidelem et partem infidelem. . . ,"1 The phrase here given in italics provides the clue to the problem we have to discuss, for the word "probabiliter" indicates that, at the time the words were written, at least, it was a matter of dispute whether a marriage of this kind could rightly be described as *ratum.* If it is not *ratum* it is not absolutely indissoluble.

To perceive exactly the point at issue, it is necessary to consider another type of marriage which is rather akin to the one we are discussing. The Catechism note under (b) ii really includes this other type: "A marriage between unbelievers . . . if only one party has been baptized is dissolved (a) *ipsojure* in favour of the faith through the Pauline privilege . . . also (b) by dispensation granted by the Apostolic Sec for such a dissolution, if the believing party seeks it." It must be remembered that, before the Code, the impediment of disparity of worship applied to marriages of all baptized persons with the unbaptized, but since the Code it affects only the marriages of Catholics with the unbaptized.2 Before the Code, therefore, it was not necessary to discuss, except as a canonical theory, the possible dissolution of a marriage between a baptized non-Catholic and an unbaptized person. The marriage was invalid and merely needed a process for obtaining a decree of nullity. But, after the Code, it became a practical matter of some importance. Some authors, relying on the terms of canon 1119, held that these marriages if consummated were indissoluble.3 Others held that they could be dissolved by the Sovereign Pontiff.4

The discussion was only partly closed when it became known that Pius XI had dissolved a marriage of this kind, 5 November, 1924. This first appeared in the *Ecclesiastical Review,* 1925, p. 188; it was reprinted and discussed in various other journals, and became generally known as the "Causa Helensis." G.G.M., a non-baptized person, contracted marriage on September 30, 1919, with F.E.G., a baptized non-Catholic; G.G.M. was civilly divorced from his wife and wished to become a Catholic and marry a Catholic woman. The essential words of the decree of the *Holji Office* arc: "Quapropter supplicat Sanctitati Tuae ut dispensatio concedatur super vinculo naturali primi matrimonii. . . . Generales Inquisitores decreverunt: 'Consulendum SSmo pro gratia dissolutionis vinculi naturalis primi matrimonii contracti a G.G.M. cum F.E.G. in favorem fidei'."

The discussion was not closed entirely because it was not too clear, from the wording of the decree, whether the act was a papal extensive interpretation of the Pauline privilege, or a papal dissolution strictly so called. The authors discussed the point in reference to the extensions of the Pauline privilege mentioned in canon 1125.5 We think there can now be no doubt that the act is a papal dissolution, commonly applied, indeed, to cases which are connected with the Pauline privilege, as in canon 1125, but which can be applied, and has been applied to the "Causa Helensis", in circumstances which do not permit the use of the Pauline privilege.0 What is the ultimate principle on which this papal power rests ? It is simply that a valid marriage

l De Matrimonio, §157.
1 Canon 1070, §1.
8 De Smet, E.T.L., 1924, p. 568.
4 Arendt, *ibid.,* p. 185.
5 Cf. Cappello, *De Matrimonio,* §789 *seq.*
• Wcmz-Vidal, *Ius Canonicum,* V, §657.

between a baptized and an unbaptized person is not a sacrament, not *matri·monium ratum,* but merely *legitimum.* The sacramental character of such marriages has always been a matter of discussion amongst theologians, the majority holding that they are not sacraments.[1] Hence, it is apparent that the dissolution granted in the "Causa Helensis" leaves absolutely intact the great dogmatic principle of canon 1118. The most recent discussion of this subject in English is in *Tbe Jurist,* II, 1942, p. 134.

(iii) We are now in a position to discuss the text of the Catechism. Even after the "Causa Helensis", and the discussions to which it gave rise, many held that the papal power could not be used in marriages validly contracted with a dispensation from the impediment of disparity of worship. *A fortiori* this was the position of those who, before the "Causa Helensis", denied that a marriage of this kind was dissoluble. Thus De Smet: "Caeterum non magis ratum est matrimonium cum dispensatione initum inter partem non baptizatam et partem catholicam, et tamen ab omnibus docetur hocce matrimonium, post consummationem, non esse dissolutioni obnoxium."[2]

But a maturer consideration of the whole subject leads one to the logical conclusion that even these marriages arc not absolutely indissoluble. A marriage between a baptized and an unbaptized person is not a sacrament, for intrinsic reasons which may be studied in the authors who deal with the point. If it is not a sacrament, no ecclesiastical dispensation from disparity of worship can possibly make it a sacrament. The Christian who receives a dispensation can contract a valid marriage with a non-Christian, but it is *matrimonium legitimum* not *matrimonium ratum.* This necessary and obvious deduction is expressly drawn by Cappello in *Periodica,* 1930, p. 89, who also notes: "Doctores generatim silent de hoc casu."

Whether this power has actually been used is another question. We know of no published instance. The Pope would naturally, we suppose, be loth to dissolve a marriage which the Church has sanctioned by granting a dispensation. But he has the power, and we have to reflect a long time before asserting that the power has never been used, nor ever will be. The ratified and consummated marriage of two Christians is indissoluble by the law of Christ, but the Church is prepared, for proportionately grave reasons, to sanction the dissolution of those unions which fall short of this definition.

Finally, the text of the Catechism presents a further point for consideration. In verifying the original of (c) iii in the English version, we found that the Latin text of 1930, third edition, did not contain the phrase, but only (c) i and ii. Consulting an earlier edition of the same year, 1930, presumably the first edition, we found that the substance of iii (English version) was contained within the Latin text of ii (Latin original). It is as follows: "Initum inter partem fidelem et partem infidelem cum dispensatione ab impedimento disparitatis cultus: (1) Matrimonium non dissolvitur per privilegium paulinum. (2) Sed solvi potest per dispensationem a Sede Apostolica concessam, parte fideli rogante, sive matrimonium consummatum fuerit, sive non." It would appear, therefore, that the English version was translated from a text slightly different from both the editions we have been able to consult, but substantially that of the first edition.

What conclusion, if any, can be drawn from the omission in the third

1 Billot, *De Sacramentis,* Thesis XXXVIII, p. 581; De Smet, *De Matrimonio,* §179.
• E.T.L., *toe. cit.,* p. 569.

edition of the statement we have been discussing ? It is absolutely inconceivable that the eminent canonist, Cardinal Gasparri, committed himself to a statement in the first edition that was subsequently found to be untenable. The only conclusion is that the phrase was omitted because it was judged to be a minute and intricate canonical question which was, perhaps, hardly suitable for inclusion in a catechism of Christian doctrine.

336.—Papal Dissolution: Procedure

a baptised Protestant, married B, who was ttnbapii^ed, in 1930. *B was subsequently divorced by A, who now desires to marry a Catholic. Is the marriage of A and B, which was consummated, absolutely indissoluble. If it is not, what is the procedure to be adopted?*

As explained in the previous question, this marriage is not absolutely indissoluble, because, though valid, it is not *ratum.*

The dissolution is a favour, not a right, and is granted comparatively rarely, and only for the gravest reasons. It entails a process in the diocesan *curia,* under directions from the *Holy Office* which has exclusive competence from canon 247. The facts which have to be juridically established are, for example, the non-baptism of B; the non-consummation of the marriage after the subsequent baptism of B, should this have taken place; the gravity of the reasons alleged. The *defensor vinudi* intervenes in the process, which has to be carried out in a strictly canonical manner, as in all marriage causes.

There is this difference between the present case and those which are known to have succeeded in obtaining a papal dissolution, namely that the petitioner is apparently remaining a non-Catholic, though desirous of marrying a Catholic if the former marriage can be dissolved. The difficulty is not, we think, insuperable. But we know of no case exactly corresponding το the present one, and it may well be that the Holy See may decline to use the power it possesses, except for the purpose of making it possible for a convert to the Catholic faith to contract a new marriage.

337.—Civil Marriage

A Catholic contracts a civil marriage and is contemplating a civil divorce. Are any special formalities necessary in this case before he may lawfully contract a fresh marriage 1

Canon 1069, §2: Quamvis prius matrimonium sit irritum aut solutum qualibet ex causa, non ideo licet aliud contrahere, antequam de prioris nullitatc aut solutione legitime et certo constiterit.

S.C. Sacram., 15 August, 1936, art. 231, §1: Si quis certo tenebatur ad canonicam formam celebrationis matrimonii, et tantum civile matrimonium contraxit, vel coram ministro acatholico matrimonium inivit, aut si apostatae a fide catholica in apostasia civiliter vel ritu alieno sc iunxerunt, ad hoc ut constet de horum statu libero, neque iudiciales sollemnitates requiruntur, neque interventus defensoris vinculi: sed hi casus solvendi sunt ab Ordinario

ipso, vel a parocho, consulto Ordinario, in praevia investigatione ad matrimonii celebrationem, de qua in can. 1019 seq.

29 June, 1941, n. 6, (<7): Praescriptum can. 1069, §2, optime norint, matrimonii nempe nullitaiem *canonica probatione esse evincendam* . . . expletis regulis traditis in supra memorata Instructione huius S.C. diei 15 augusti 1936, art. 226 seq.

Allegatum I, n. 6: Si civile quod vocant matrimonium cum alia persona etiam alteruter tantum attentaverit et resolutum definitive fuerit, resolutionis definitivae huiusmodi requiratur documentum authenticum; si adhuc vero vigeat, consulatur Ordinarius.

(i) Though claiming sole competence over the substance of the marriages of Christians, the Church recognizes that the contract has certain civil effects, and is loth to permit marriages *coram Ecclesia* which are not recognized as such by the civil authority. If the civil contract is still valid, the matter must for this added reason be referred to the Ordinary. He may, indeed, sanction the very unusual procedure of a "marriage of conscience", as provided for in canons 1104-1107; or he may, either by the use of faculties he may possess or by seeking them from the Holy See, dispense from the form so that the marriage may be contracted before witnesses alone, as provided for in canon 1098 and *Code Commission,* 25 July, 1951. But it is far more likely, especially in this country, that he will decline altogether to sanction the marriage, even though the first is invalid, unless and until a civil divorce has been obtained. Cf. *Periodica,* 1932, p. 42.

(ii) It is clear from the above texts that persons of this kind—loosely styled *Ne Temere* cases—are not free to contract marriage *coram ecclesia* unless the invalidity of the attempted marriage is certain, and the certainty has been lawfully established. Usually its invalidity is fairly certain, but a parish priest may never assist at the marriage of a person in these circumstances without first having recourse to the Ordinary.

The law has become, indeed, progressively liberal in reducing to the minimum the previous formalities to be observed in these cases, but the intervention of the Ordinary is still required, firstly, to ensure that there will be no avoidable conflict with the civil law, and for this purpose documentary proof of the civil divorce must be produced, as the Instruction 15 August, 1941, notes in n. 6 of *Allegatum* I. It is required, secondly, for the purpose of legally establishing the invalidity of the civil contract, no matter how certain this invalidity may appear to be; it may transpire, on examination, that the persons were not baptized, or were exempt from the obligation of observing the canonical form at the time of the civil contract, as provided for in canon 1099, §2; in both cases the civil marriage, other things being equal, is canonically valid. The law, accordingly, directs that the Ordinary must be consulted, and a parish priest may not himself, of his own authority, decide that a person in these circumstances is free to marry.

338.—Non-Catholics and Canon 1990

In view of the declaration of the Holy Office, 27 *January,* 1928, *that tbe matrimonial causes of non-Catbolics cannot be admitted without permission from tbe Holy See, are we to understand that the summary procedure of canons* 1990-1992 *is included in this rule'*

The decision of the *Holy Office'* was to the effect that a non-Catholic could not in future act as *plaintiffin* matrimonial causes; it did not forbid the Catholic party of a mixed marriage to bring his case before the judgement of the diocesan tribunal. Canon 1990 states that in cases where the existence of the impediments of disparity of worship, Holy Orders, solemn vow, ligamen, consanguinity, affinity and spiritual relationship, can be proved to exist from certain and authentic documents, to which no exception can be taken, and where it is equally certain that no dispensation has been granted, the formalities of a trial need not be observed; the Ordinary may declare the nullity of these marriages after citing the parties and consulting the *Defensor Vinculi.*

It is thought by some that this summary procedure is included in the prohibition of the *Holy Office,* and the view is well-founded since the process is judicial not administrative.2 This is the opinion of Doheny in *Canonical Procedure in Matrimonial Cases,* II, 1944, p. 152.

Other writers take the opposite view which is supported by more than one private declaration of the *Holy Office,* and notably that given to the Bishop of Harrisburg, 20 April, 1931.3 In our opinion, this view may safely be followed.

339.—Procurators and Advocates

IPTw/ *are the qualifications required by law for the appointment of a procurator or advocate in the ecclesiastical trial of a marriage case ?*

Canon 1657, §1* Procurator et advocatus esse debent catholici, aetate maiores, bonae famae; acatholicus non admittitur, nisi per exceptionem et ex necessitate.

§2: Advocatus debet praeterea esse doctor vel alloqui vere peritus, saltem in iure canonico.

S.C. Sacram., 15 August, 1936, art. 48:

§2. Advocatus sit oportet praeterea doctor saltem in iure canonico (Cfr. canon 1657, §2) ct per triennium tirocinium laudabiliter exercuerit; quod valde optandum est ut fecerit apud Tribunal S.R. Rotae.

§5. Procurator sit oportet in iure canonico saltem prolyta et per annum tirocinium, de quo in §2, laudabiliter expleverit.

Various qualifications are required in the context of the above two quotations. Our comment is restricted to the qualifications of these persons from the point of view of their knowledge of canon law, since the Instruction in art. 48 appears in two respects to be more exacting than canon 1657 of the Code: it requires a degree in canon law and a period of previous experience in this legal business, whereas the Code merely enacts that these persons shall be truly skilled in canon law.

We think the two texts can easily be harmonized by recalling the style in which many of the laws and directions of the Holy See are expressed. Thus, in the dispensation from the Eucharistic fast which we enjoy at present, it is stated that the communicant must be fasting for four hours,

1 /1./1.I., 1928, p. 75.
• *Code Commission,* 6 December, 1943, U, 11
• Bouscarcn, *Digest,* II, p. 267.

or at least for three hours: the stricter reckoning is the desirable one, but it is not a *sine qua non.* Having in mind, no doubt, the well-known propensities of the moral theologians, the legislator is aware that, if the time were put simply as three hours, we should all say that, morally speaking, a period of two hours suffices.

The same must be said about the qualifications of procurators and advocates in ecclesiastical trials: it is greatly to be desired, and where possible secured, that they shall have degrees and previous experience, but the *sine qua non* is that they shall be truly skilled in canon law. This interpretation is supported by art. 21 of the Instruction which deals in general with all the personnel of the tribunal: "Attenta harum causarum gravitate necnon difficultate, tum quoad leges procédurales servandas, tum quoad intrinsecum causae meritum, Episcoporum est, *graviter onerata eorum conscientia,* caute et diligenter seligere sacerdotes, quorum prudentia et probitas sit omni exceptione maior, quique laurea vel saltem licentia in iure canonico sint praediti, sin minus scientia et experientia iuridica *vere* polleant." It is supported also by art. 3 of the rules issued 10 July, 1940,[1] for the re-adjustment of Italian diocesan tribunals. Referring to all the personnel, judges and ministers, of each tribunal, the text reads: "Curandum erit ut electi non modo morum integritate praestent, et laurea vel saltem licentia in iure canonico sint praediti, sin minus scientia et experientia iuridica *vere* polleant, sed tempus quoque sufficiens impendere valeant muneribus sibi collatis rite obeundis."

In practice there can be no serious difficulty, since both procurator and advocate now need, from art. 48, §4, of the Instruction, the Ordinary's approbation, which will not be given except to persons who are sufficiently expert. In this respect, as regards the procurator at least, the Instruction is more strict than canon 1658, §1, which states that the Ordinary's approbation is not required.

If the explanation we have offered above is not acceptable, and the qualifications enumerated in art. 48 of the Instruction are to be regarded as strictly necessary in the common law, it must be held that the Ordinary either enjoys an induit, or is using the powers given him in canon 81, whenever a procurator or advocate is approved who, though sufficiently expert, does not possess all the other qualifications. For it may be observed, from art. 48, §1, and canon 1657, §1, that, where necessary and by way of an exception, even a non-Catholic (who presumably lacks canonical degrees) may be appointed to either of these offices. Cf. *Apollinaris,* 1957, p. 467.

340.—Marriage Causes: Bibliographe

Which manuals explain, from a practical point of view, the procedure in matriage cases which come before the diocesan tribunal? It would be convenient if special references were given to sources in English.

(i) The one essential document is the Instruction of the *Congregation oj the Sacraments,* 15 August, 1956, published in *A.A.S.,* XXVIII, 1956,

[1] *sl.A.S.,* XXXI'I, p. 37j.

pp. 313-72, entitled "Instructio servanda a tribunalibus dioecesanis in pertractandis causis de nullitatc matrimoniorum". Commentaries on this document appeared, at the time, in the canonical journals. Dr. J. Torre, an advocate of the Rota, has published one in Latin, which is obtainable from M. D'Auria, S. Sedis Apostolicac Typographus, Naples, 15 lire.

The articles of this Instruction, faced on opposite pages by an English version, form the substance of Dr. Dohcny's *Practical Manualfor Marriage Cases,* Bruce Publishing Company, New York, 1937. The ground is covered also by the same writer's *Canonical Procedure in Matrimonial Cases,* 2 Vols, 1937 and 1944. These books, written by a practical canonist who is an advocate of the Rota, are the best obtainable in English on the subject, and include a number of*formulae.*

(ii) The rules to be observed in processes concerning the non-consummation of marriage were issued by the *Congregation of the Sacraments,* ▮*j* May, 1923, *A.A.S.,* XV, 1925, pp. 392-413, supplemented by a further document, 27 March, 1929, which is given as Appendix I to the Instruction of i j August, 1936. An English version of both is given by Woywod, *Canonical Decisions of the Holy See,* 1933, J. Wagner, New York. Appendix XXI of this book, after printing the texts, contains a series of*formulae* for these processes, many of which are in English.

There are also some rules, we believe, for the conduct of a diocesan process preliminary to a papal dissolution "in favorem fidci", but these have not been published.

(iii) A specimen series of acts illustrating the course of a trial may be seen in Part III of Dr. Benedetti's *Ordo Judicialis Processus Canonici,* Marietti, 1938. The recent edition of this work contains a commentary on the *Instructions of 15* August, 1936, and 7 May, 1923, together with the*formula* to be used in processes concerning the non-consummation of marriage.

Similar specimens are given by Canon Lanier, the Vice-Official of Paris, in his *Guide Pratique de la Procédure Matrimoniale,* Téqui, 1927; also by d'Angelo in *La Curia Diocesana,* P. Lisi, Giarre, Sicily, 1928. But neither of these books has, we believe, been reissued since 1936, and works of this character dating from before the Instruction of 15 August, 1936, must be used with caution.

(iv) In drawing up the judgement of the Court, a few of the recently published volumes *Decisiones S. Romanae Rotae,* Libreria Vaticana, will provide ample material. The grounds upon which a marriage is assailed, fear, immoral conditions, lack of canonical form, etc., are constantly recurring, and the Rota judgement *quoadjus,* often also *quoadfactum,* can easily be adapted to composing a judgement for the case in hand. It is the rule not to publish these decisions of the Rota until ten years have elapsed. But it is clear that more recent judgements than these are obtainable, not only by the parties interested but by others. Dr. Hollnsteiner's *Die Spruchpraxis der S. Romana Rota in Ehenichfigeitspro^essen,* Bresgau, 1934, is a useful analysis of these documents, even for those with only a slight knowledge of German, since the texts cited arc in Latin. Also extremely useful, as an Index of the more recently published volumes, is Bouscarcn's *Canon Law Digest,* II, Bruce Publishing Company, Milwaukee, 1937. Under the appropriate canons or the Code a summarized reference is given to over 200 Rota judgements. The *Normae S. Romanae Rotae Tribunalis, A.A.S.,* XXVI, 1934, pp. 449-92, have often been adapted to the use of diocesan tribunals, e.g. *Jus Pontificium*

1934, XIV, p. 305, but such studies are of small utility since the Instruction, 15 August, 1936.

(v) A more detailed account of the duties of persons functioning in the diocesan tribunal may be seen in Dr. Tobin's *De Officiali Curiae Dioecesanae,* Gregorian University, Rome, 1936; or in Dr. Glynn's *The Promoter of Justice,* Catholic University of America, Washington, 1936. Both arc theses for the Doctorate in canon law, and the list of Washington theses contains a number of other commentaries dealing with this subject, *e.g.:* Lyons, *The Collegiate Tribunal of First Instance,* 1932; Kcaly, *The Introductory TibelIns in Church Court Procedure,* 1937.

(vi) Recent Roman documents, which have not yet been incorporated in the manuals mentioned, should also be born in mind. The more important are:

(a) Holy Office, zz March, 1939, *The Clergy Review,* XVI, 1939, p. 553, directing that a "Promotor lustitiae" may not accuse a marriage denounced by a non-Catholic, with a faculty from the *Holy Office,* unless in the Ordinary's judgement the public good demands this intervention.

{b) Holy Office, 15 January, 1940, *op. cit.,* XVIII, 1940, p. 555, deciding that apostates are included under the term "acatholici" for the purposes of the law in art. 35, §3, of the 1936 Instruction.

{c) Code Commission, 27 July, 1942, *op. cit.,* XXIII, 1943, p. 90, declaring in relation to canon 1971, §1, n. 1, that "causa culpabilis" means "directa et dolosa culpabilis".

(J) *Code Commission,* 6 December, 1945, *op. cit.,* XXIV, 1944, p. 567, determining the appropriate Ordinary for denouncing a marriage; limiting canon 1990 to the impediments mentioned therein; and declaring canon 1990 to be a judicial not an administrative process.

§9. ATTEMPTED MARRIAGE

341.—Civil Marriage Preceding

One bears occasionally of Catholics who make the civil contract first at the register office and proceed immediately to the church for the marriage. Is this permitted or may the Ordinary allow it to be done ?

In England this procedure is certainly not permitted, and though, in principle, an Ordinary may allow it to be done, we cannot easily conceive what justifying reason could exist for the practice, since the civil law provides for the civil contract to follow the marriage rite.

(i) In the common law of the Church it is absolutely recognized that the marriages of Catholics should also be civilly valid, and, far from objecting to the civil formalities, we are all instructed to observe them: "ut sibi (sponsis) liceat hac in re morem legibus gerere, ipsa non abnuente Ecclesia, quae vult atque optat ut in omnes partes salva sint matrimoniorum effecta, et nc quid liberis detrimenti afferatur."[1] In the Instruction of the *Congregation of the Sacraments,* 29 June, 1941, parish priests are recommended to

[1] Leo XIII, *Arcanum,* ro February, 188c

question the parties on this point: "An aliquid et quid actui civili ineundo obstet ? Id valet pro locis ubi actus civilis auctoritate publica praecipitur: quo casu parochus, inconsulto Ordinario, nuptiis nc assistat, si quid actui civili ineundo obsit, vel alias de eiusdem civilis actus omissione suspicio subsit."[1] An added reason is, of course, that civil penalties may be incurred by priests who illegally assist at marriages.

(ii) Where the civil law requires the civil contract to precede the marriage *coram Ecclesia,* the Church most unwillingly accepts the situation and tolerates the practice to avoid greater evils. The arrangement is wholly undesirable because it encourages the idea that the religious ceremony is merely an adornment to the contract, instead of being, as it it is everywhere since *Ne Temere,* the substantial contract itself. Nevertheless, this is the civil law in France, Germany and many other places, and it is often sanctioned by Concordat with the Holy See, as it is, for example, in art. 26 of the Concordat with Germany, 10 September, 1933. In such places the faithful are usually instructed very carefully as to the meaning of the civil act and the kind of consent that should then be given.[2] Whatever the effects in civil law may be, the parties understand that they are not married validly until their true matrimonial consent is given before the competent priest and witnesses.

(iii) In England no difficulty arises and no toleration of a previous civil contract is called for, because our marriage laws arc so framed, since the Act of 1856, precisely with the purpose of meeting religious objections to civil marriage. By contracting a marriage in a register office, instead of procuring the registrar's attendance at the church, a Catholic in this country would be liable, at least, to the penalties of such canons as 2357, §2, 2294, §2, and 1240, §1.6. The English bishops have, therefore, declared that the religious ceremony of all marriages must take place before the civil formality,[3] and diocesan legislation frequently repeats this instruction.[4] Certainly, if the necessity arose, the Ordinary could sanction a departure from the law, it being assumed that all the canonical preliminaries to marriage have been duly observed. If this permission has not been obtained, the case would have to be dealt with like any other of its kind, and the attempted marriage convalidatcd.

342.—Marriage Before Nov-Catholic Minister

Is it correct to hold that the censure of canon 2319, §1.1, *is not incurred by two Catholics who contract marriage in a non-Catholic church ?*

Canon 2519, §1.1 : Subsunt excommunicationi latae sententiae Ordinario reservatae Catholici: qui matrimonium ineunt coram ministro acatholico contra praescriptum can. 1065, §1.

Canon 1063, §1: Etsi ab Ecclesia obtenta sit dispensatio super impedimento mixtae religionis, coniuges nequeunt, vel ante vel post matrimonium coram Ecclesia initum, adire quoque . . . ministrum acatholicum . . .

l A.A.S., XXIII, 1941, 512.
1 Cf. Dc Smct, *De Matrimonio,* §462, §4.
9 Cf. *Leeds Synods,* 1911, p. 102.
* Cf. *SliddksbroKgb Deerees,* 195 î, η. X59.

Canon 2219, §1: In poenis benignior est interpretatio facienda . . .

§3. Non licet poenam de persona ad personam vel de casu ad casum producere, quamvis par adsit ratio, imo gravior. . . .

(i) It is certain from the general principles governing the incurring of censures, and particularly from the provisions of canon 2219, that the censure to which a Catholic is liable from marriage before a non-Catholic minister must be restricted to the *delicium* defined in canons 2319, §1.1, and 1063, §1, i.e. to contracting a mixed marriage in the circumstances described by these canons. Thus Cappello, *De Censuris,* §369; *Apollinaris,* 1932, p. 511; Gougnard, *Collationes Theologicae,* 1936, p. 114.

(ii) We arc aware that in this country, when such cases occur, the practice very often is to regard the two Catholic parties as excommunicated, notwithstanding the interpretation given above. It is hardly worth upsetting the practice, since the parties in all likelihood are excommunicated from §1.2, of the same canon: "qui matrimonium uniuntur cum pacto explicito vel implicito ut omnis vel aliqua proles educetur extra catholicam Ecclesiam"; they are also, owing to the act of *communicatio in divinis,* suspected of heresy from canon 2516, and liable in given circumstances to the censure attached to heresy.

If it is thought, nevertheless, that all Catholics attempting marriage before non-Catholic ministers deserve to be excommunicated for this act alone, the procedure is for the legislator to make this a *delictum* to which a censure is attached by local law. This is done in America by the Hird Baltimore Council. Cf. Beste, *Introductio in Codicem,* p. 939.

343.—Civil Marriage: Danger of Death

Titius, a Catholic, is married in the Protestant Church to Bertha, a non-Catbolic, who has refused to sign the mixed marriage guarantees. Being in danger of death, may a priest leave him in goodfaith concerning his matrimonial affairs, and give him the last sacraments, or is he bound to extract a promise that he will not live with Bertha until the guarantees bave been given and the marriage revalidated?

The simplest and most practical way of dealing with the matter is to abstract altogether from the mixed marriage difficulty, and to obtain from Titius a public undertaking that, if he recovers, he will regularize *coram Ecclesia* his attempted marriage with Bertha. In danger of death this suffices as a reparation of the scandal. He cannot be left in good faith, since his marriage in the Protestant Church is a public act with public scandal accompanying. It is advisable to leave the issue concerning the guarantees to be settled when the marriage is revalidated, since an undertaking to observe this law may be taken as implied in his general intention to regularize the marriage. If the priest introduces this problem of guarantees to be given in the future, Titius might be led expressly to repudiate a future marriage *coram Ecclesia,* since he might regard the guarantees as an impossible condition. To this extent, at least, Titius may be left in good faith. By obtaining a general promise to regularize the union, the priest has sufficient for the purpose of explaining, if necessary, to the faithful that Titius has been reconciled to the Church.

344.—Civil Marriage: Reception of Sacraments

A Catholic man who has contracted a civil union before the registrar with a non-Catholic is now separatedfrom his partner owing to war conditions. Being anxious to receive the sacraments he declares that he will have no marital relations until his marriage is "put right". May an ordinary priest or confessor (1) *absolve him without reference io the Ordinary, and* (2) *revalidate the marriage when circumstances permit?*

A full and satisfactory answer to this question would involve a great part of the treatises on marriage and reservations. We must, therefore, be content with the following points which contain the chief principles of the solution.

(i) Provided the man is contrite, he may, in the common law, be absolved like any other penitent properly disposed: this means, in effect, regarding himself as unmarried, which it appears he has undertaken to do. He may not, however, publicly receive the sacraments in a place where his civil marriage is known, since this would cause scandal to the faithful: the danger of scandal must be removed before public reception of the sacraments is permissible.

In some localities, however, marriage in a registry office may be a case reserved to the Ordinary cither *propter peccatum* or *propter censuram,* in which event it is subject to the usual procedure.

(ii) Assuming that the non-Catholic remains such when the time comes for revalidating the marriage, it will be necessary to approach the Ordinary for the purpose of a dispensation from the impediment of mixed religion.

If, however, at the time of revalidation, the non-Catholic has been reconciled to the Church, and there is no other bar or impediment, the marriage may be revalidated in the common law without reference to the Ordinary.

Local law, however, sometimes directs that all cases of marriage revalidation must be referred to the Ordinary, even though the case is not reserved *propter peccatum* or *propter censuram.* Cf. *Lancaster Statuta,* 1935,0. 139.

(iii) Since the requirements of the civil law have been observed, and there is no civil prohibition of any kind forbidding a subsequent religious ceremony, the marriage could be revalidated whilst the parties are separated by using the proxy procedure of canon 1089. This method is unusual and full of difficulties; a local law may require the Ordinary's signature to the mandate appointing a proxy, in addition to his licence required by the common law in canon 1091, and his dispensation from the impediment of mixed religion.

345.—Legitimacy from Putative Marriage

Is there a solidly probable opinion for the view that a marriage between a Catholic and a non-Catholic contracted in a register office is a putative marriage, and consentitly that tht children are canonically legitimate? It is presumed that the non-Catholic party is in goodfaith.

Canon io ij, §4: Matrimonium invalidum dicitur *putativum,* si in bona fide ab una saltern parte celebratum fuerit, donec utraque pars de eiusdem nullitatc certa evadat.

Canon 1114: Legitimi sunt filii concepti aut nati ex matrimonio valido vel putativo, nisi parentibus ob solemnem professionem religiosam vel susceptum ordinem sacrum prohibitus tempore conceptionis fuerit usus matrimonii antea contracti.

(i) One view is that the word "celebratum" in canon 1015 means a marriage contracted with the canonical form required by canons 1094 and 1098; it would follow necessarily, if this view is correct, that the marriage of a Catholic in a register office, since 1908, when Ne *Temere* came in force, cannot be putative, and that the children cannot be canonically legitimate. Cappello, *De Matrimonio,* §48, 2, is often cited in favour of this view, but the opinion is considerably modified in a later part of the treatise, §.746. The chief reason in favour of this interpretation is that in the pre-Code law the observance of the canonical form was certainly essential for a putative marriage, and from canon 6 it must be maintained that the Code has introduced no change. This solution is, we think, the more probable one. Cf. Payen, *De Matrimonio,* §§135,174.

(ii) The second view is that the Code no longer requires for putative marriage the observance of the canonical form. This is taught by Wernz-Vidal, *Ius Canonicum,* V, §22, f.n. (14), and Chelodi, *lus Matrimoniale,* §9, though neither goes very fully into the question. The best treatment we know' of this point is by Payen, *De Matrimonio,* §135, and Case 19, §174. Wherever possible the safe view of (i) should be followed in practice; for example, a dispensation should be sought from irregularity (canon 984.1) if the issue of such marriages desires Holy Orders. But the view favouring legitimacy is solidly probable at the moment, and, in our circumstances in this country, this view should be maintained, in our opinion, in order not to cause unnecessary offence to non-Catholics: they already regard our marriage laws as unjust to the non-Catholic party of a mixed marriage, and there is no need to fix the stigma of canonical illegitimacy to the offspring of such marriages contracted in register offices, until it becomes quite certain, by some official decision, that this is actually the case.

XI. SACRAMENTALS

346.—Paschal Holy Water

A controversy exists with regard to the use of the blessed water from the font on Holy Saturday and the Vigil of Pentecost. Some maintain that the PJtual and the Missal direct its use merely for the sprinkling of the people at the blessing of the font and on the respective Sundays before the principal Mass, and for the blessing of houses at these seasons·, they deny that it can take the place of ordinary blessed water for those ritual blessings which entail sprinkling with "aqua benedicta", e.g. vestments, and the like. If the blessed water from the font is reckoned as valid "aqua benedicta", is there any term to its valid use l

The rubrics of the rite *Grdo adfaciendam aquam benedictam* in the Missal direct that the water for the *Asperges* before the chief Mass shall be blessed every Sunday, except Easter Sunday and Pentecost. The Ritual adds that it may be blessed not only on Sundays but at any other time if the need arises. It is clear, therefore, that the law requires the water to be renewed every week, and this is expressly stated in *Caerem. Epp.*, I, vi, 2 *ad finem.* The custom started in the ninth century.

Easter Sunday and Pentecost are excepted, because the rubrics of the Missal on those days direct that the blessed water is to be taken from the font before the infusion of holy oils, and used for sprinkling houses and other places; accordingly, the ordinary rite in the Missal directs this baptismal water to be used for sprinkling the people on those days before the chief Mass. Churches which have no font are permitted to have the water blessed on those days with the ordinary form, not indeed during the Mass but at any other hour of the day, as decided by J'.R.C., 31 August, 1872, n. 3271.2.

The reasons for the weekly renewal are partly spiritual—a reminder of the grace of Baptism; partly material—to ensure that the water shall be fresh and clean. Hence, the blessing of houses with water taken from the font on Holy Saturday is, properly speaking, restricted to Easter week: "durante octava Paschae" as in S.R.C., nn. 3645 and 4108.

We have not traced any author who deals explicitly with the point raised but it seems to us that, granted the law of weekly renewal of blessed water taken in conjunction with the rule which substitutes water from the font at Easter and Pentecost, the correct practice is to use the latter for all ritual purposes throughout the octaves of Easter and Pentecost; water blessed with the ordinary form should not be used at these times except in churches which have no font.

As in many other matters, people occasionally depart from the strict letter of the law: a quantity of water is blessed and not renewed until the supply is exhausted. Some writers are severely against this practice as, for example, *Ephemerides Liturgicae,* 1925, p. 278; others tolerate a departure from the rubric of weekly renewal, if it cannot be observed without some inconvenience, as *ΓAmi du Clergé,* 1920, p. 671. We think that this habit of

not renewing the water weekly, which is very common, is responsible for the custom of continuing the use of Paschal and Pentecostal water for all ritual purposes as long as the supply lasts. It is incorrect to use it as lustral water beyond the octaves of Easter and Pentecost, but there can be no question that its use is valid.

In order to meet the demand for blessed water on this day, the custom exists of placing other large vessels filled with water near the font\ it is considered that this water is blessed together with that in the font. Is this correct?

Canon 1145: Nova sacramentalia constituere aut recepta authentice interpretari, ex eisdem aliqua abolere aut mutare, sola potest Sedes Apostolica.

Canon 1148, §1: In Sacramentalibus conficiendis seu administrandis accurate serventur ritus ab Ecclesia probati.

(i) If the rite of blessing the water in the font on Holy Saturday, up to the point where the holy oils are added, consisted solely of prayers, it could quite properly be maintained that it -was the celebrant's intention to bless the water in all the vessels surrounding the font. But actually the rite includes several actions of great antiquity and significance, such as the immersion of the paschal candle, breathings and separation of the water. It is quite clear that if one desires the effect which the Church has in mind in the use of any sacramental, one must use the rite which the Church directs.

Thus, the rubrics of the missal, and still more explicitly those of the *Memoriale "Rdtuum,* direct that for the blessing of houses and for filling the stoups, water is to be taken from the font, which has just been blessed with the words and actions of the rite. It would certainly be convenient if the Holy See were to decide that the other vessels of water, which it is customary to use, arc blessed at the same time as the font, even though the rite is performed over the font water alone. But no decision of this kind has been given; therefore, in our view, the water in these vessels is not blessed with the Holy Saturday rite: it is, we suppose, blessed in the sense that any appropriate article may be blessed by a priest.

(ii) The solution of the difficulty, in places where this water is much in demand and the font is very small, is to perform the rite up to the infusion of the holy oils over one very large vessel; then, at this point, to fill the font with the blessed water and continue with the ceremony. This method is not, indeed, justified by any rubrics, but its validity cannot be assailed and it is recommended by some writers, e.g. *l'Ami du Clergé,* 1931, p. 781.

347.—Paschal Blessing of Houses

Owing to the number of persons who would like their /souses blessed on Holy Saturday, it is impossible for the parish priest to satisfy their desire on that day. May he bless these houses during Holy ll^eek or at some convenient time after Easter? Also, if there is a deacon available, may he be requested by the parish priest to bless the houses?

(i) Canon 462.6: Functiones parocho reservatae sunt, nisi aliud iure

caveatur. . . . Domibus ad normam librorum liturgicorum benedicere Sabbato Sancto vel alia die pro locorum consuetudine.

There arc two *formulae* for the blessing of houses in the *Rjttiale Romanum·,* one in Tit. viii, cap. iv, "in Sabbato Sancto et reliquo tempore Paschali"; the other in cap. v, "extra tempus Paschale". The second of these blessings, with holy water blessed according to the usual form, may be given during Holy Week, exclusive of Holy Saturday, or at any time of the year, except the Paschal octave. The first is one of the functions reserved to the parish priest, and may not be employed until Paschal time begins. A reply of J.R.C. expressly directs that it may not be used on Good Friday evening.[1] Both this reply and an earlier one[2] permit the blessing "durante hebdomada octavae paschae".

(ii) Canon 1147, §4: Diaconi et lectores illas tantum valide et licite benedictiones dare possunt, quae ipsis expresse a iure permittuntur.

The functions proper to deacons are mentioned in certain canons, e.g. preaching (canon 1342, §1); baptizing or distributing Holy Communion as the extraordinary minister (canons 741, 845, §2). But in no text of any liturgical book in current use is the rite of blessing houses conceded to deacons. Accordingly, 5.R.C., 8 August, 1835, n. 2729, directs that a deacon may not do so, even with delegation from the parish priest.

348.—Holy Water and Blessings

Is the blessing of pious objects valid ***if*** *the priest neglects to observe the rubric directing them to be sprinkled with* ***Holy Water?***

In the official *Suffragism* to the decree of the *Congregation of Rates,* 27 August, 1836,[3] a blessing is defined as "precatio quaedam, qua aliqua sanctitas confertur, et illa proprie dicitur quae fit nomine Ecclesiae, et ex auctoritate a Deo ei concessa, quando nempe quis ratione sui muneris, quo fungitur, petit a Deo ut vel personis vel rebus bona convenientia tribuat. Deus enim posuit Sacerdotes et Ministros Ecclesiasticos dispensatores benedictionum suarum. . . . Deo itaque operante in ministerio Sacerdotali benedictio ecclesiastica suum sortitur effectum; non quidem ex opere operato ad instar Sacramentorum, sed ex vi precum Ecclesiae, quae cum Christi sit sponsa, non potest non exaudiri. . . . Tota itaque benedictionum Ecclesiasticarum vis posita est in oratione et invocatione Ecclesiae, quae fit per suos ministros; hinc est quod non aliis formis, non aliis verbis uti quisque benedicendo debeat, quam iis, quae ab Ecclesia sunt constituta."

For the effect to be secured which the Church intends it is necessary to use those "forms" and "words" which the Church has directed to be used. In many cases, particularly when a very short form is allowed, consisting of a simple sign of the cross, there is no mention of the use of holy water. In other cases, for example, in the blessing of the nuptial ring, its use is directed. We arc of the opinion that, for this latter group, the omission of holy water renders the blessing invalid, unless a faculty is obtained for blessing "unico signo crucis". Canon 1148, §2: "Consecrationes et benedictiones sive

[1] 7 March, 1905, η. 4108.
[2] N. χ645·
[3] *Darrfa Authentica,* IV, p. tfto

constitutivae sive invocativae invalidae sunt, si adhibita non fuerit formula ab Ecclesia praescripta." It seems to us that the use of holy water, when prescribed, is an essential part of the "form". "Haec aspersio cum precibus ad benedictionem ut causa efficiens benedictionis toncurrit, quia res precibus et simul aspersione benedicuntur. Quamvis conveniat ut res aqua benedicta physice tangantur, non oportet tamen ut quaelibet in particulari tangatur."[1] F. Hecht, P.S.M., in *Periodica,* 1927, p. 25, agrees with this opinion: "Deficiente aspersione praescripta, benedictio invalida fit."

349.—The "Misereatur" Formula

What is the purpose, nature and effect of the general absolution formula which follows the Confiteor at Mass, Office and other occasions ?

Before offering Mass or receiving Holy Communion a man must "prove himself", as St. Paul says in I Cor. xi, 28. In the earliest liturgies, therefore, one finds the profession of unworthiness and petition for forgiveness, which is known as the "apologia", many current examples of which are extant. In our current Missal the ancient *Aufer a nobis* and the more recent *Oramus te Domine* belong to this category, as well as the seven prayers, one for each day of the week, given in the "Praeparatio ad Missam".

The *Confiteor* and following/orw///^ have the same purpose and appear to have been a development of the "apologia". But there is this considerable difference: unlike the latter, which is always personal and private, the general absolution formula is reciprocal and public, and the *Indulgentiam* clearly implies the exercise of some sacerdotal power or authority. It is rightly to be numbered amongst the "sacramentals", which are described in canon 1144 as "res aut actiones quibus Ecclesia, in aliquam Sacramentorum imitationem, uti solet ad obtinendos ex sua impetratione effectus praesertim spirituales". The difference between sacramentals and the sacraments, which they imitate, is that their institution is by the Church, not by Christ, and that their effects arc not caused "ex opere operato". Dr. Callewacrt, writing in *Collationes Brugenses,* 1952, p. 115, gives the clearest explanation we have seen of the nature of the *Indulgentiam*. ". . . sacerdos tanquam publicus minister gratiae et veniae divinae, formula deprccativa, nomine Ecclesiae, pro seipso simul ac pro adstantibus, implorat 'indulgentiam, absolutionem et remissionem omnium peccatorum' de quibus habetur contritio. Ab Ecclesia ordinatur ritus ille, et signanter ultima solemnior oratio, ad remissionem peccatorum obtinendam non vi 'sacramenti' ex opere operato, sed virtute 'sacramentalis' ex opere operantis Ecclesiae. Ab hac enim institutus eiusque nomine peractus acquirit ritus ille virtutem a dispositione ministri et subiecti independentem, qua per modum impetrationis Deum positivo influxu movet ut, intuitu dilectae Christi sponsae, excitet in voluntate veram poenitentiam, per quam mereatur peccatorum remissionem."

St. Thomas explicitly teaches, in *Summa Theol.,* III, 87, 5, ad 1, that the sacramentals remit venial sin "inquantum inclinant animam ad motum poenitentiae", and this must clearly be held when the formula itself refers to the remission of sin. Those writers who dissent from the doctrine mean, of course, that this effect is not caused "ex opere operato". Mortal sins

[1] De Herdt, *Sarrae I.i/ur^ae Praxis,* III. §20$. ad 6

must be submitted to the power of the keys in the sacrament of Penance, whereas venial sins need not be. If mortal sins are remitted on the occasion of the *Indulgentiam,* it will be because the grace of making an act of perfect contrition is then given; the obligation of confession, or course, remains.

What has been said about the meaning of the formula when it occurs at Mass and Holy Communion applies equally to other rites, e.g. in reciting the Divine Office, morning (formerly *Preces* were always said at Prime) and evening, or before receiving Extreme Unction, or before the grant of a liturgical indulgence.

Its purpose before the absolution of sin in the sacrament of Penance is less evident, since it would appear that its value as a sacramental is lost when followed immediately by a sacrament designed of its nature to remit sin *ex opere operato.* It is true that the preceding *formula* may be omitted for a just cause, but canon 885 directs that it shall normally be said. We have not seen any perfectly satisfactory explanation of this difficulty, but we conceive it to be that the preceding formula has for its purpose to dispose the penitent for absolution, in much the same way as the blessing which is sought and given immediately the penitent arrives; the uplifted right hand, during the recital of the form, is a relic of the former imposition of hands.

350.—Unico Signo Crucis

Many faculties concede the power to bless objects "unico signo crucis". Is it necessary for validity in such cases to pronounce the formula, "In nomine Patris", etc. ?

Canon 1148, §2: Consecrationes ac benedictiones sive constitutivae sive invocativae invalidae sunt, si adhibita non fuerit formula ab Ecclesia praescripta.

The substance of the concession is to dispense with the formula of versicles, responses and prayers proper to each blessing, for example, that for the Dominican indulgenced rosary in *PJtnale Romanum,* n. 35, and to use instead a short form consisting in the sign of the cross.

(i) Some arc of the opinion that the use of the words *In nomine Patris,* etc., is not necessary for the validity of the act, and it is pointed out that the decree J.R.C., 12 August, 1854, which recommended the words to be said, is not in the collection of authentic decrees. Cf. *Florileginm,* 193 3, p. 23, n. 4.

(ii) The best doctrinal authority, however, on matters of this kind is the *Ephemerides Eiiurgicae',* a careful survey of all the published decrees leads a writer in that journal, 1933, p. 71, to conclude that the omission of the words *In nomine Patris,* etc., leaves the validity of the blessing gravely in doubt. We agree with this solution and, seeing that the formula is so simple and known to everyone, priests should never omit its use when blessing and indulgencing a pious object "unico signo crucis".

351.—Churching an Unmarried Mother

Is there any law which forbids this blessing to be given except to a mother whose child is bom from a valid marriage ?

(i) The majority of the authorities we have consulted merely state that an unmarried mother has no *right* to this blessing. The decision is based on *S.C. Cone.,* 18 July *(al.* June), 1859, a reply which is not in the *Fontes* of the Code, but is printed in other collections such as Bucceroni's Supplement to the *Bibliotheca* of Ferraris (1899), IX, p. 119. "Rituale Romanum nihil dicit, an mulieres post partum illegitimum possint accipere benedictionem in ordine Sacramenti Matrimonii post partum parescriptam. In multis dioecesibus Germaniae valet antiqua consuetudo hanc benedictionem tantum uxoribus impertiendi, vel viduis post partum posthumum. Quaeritur an haec consuetudo sit Rituali conformis, et quatenus negative, an possit tolerari ut praefata benedictio post partum illegitimum denegetur. *Resp.* Ad benedictionem post partum ius tantummodo habere mulieres, quae ex legitimo matrimonio pepererunt." It is therefore quite certain that, in the common law of the church, unmarried mothers cannot claim this blessing as a right.

(ii) If it is asked whether it may be given *as afavour;* the question cannot be answered with the same certainty. On a general principle, this would never be permitted if scandal were likely to arise; but in many cases scandal would not arise, and the individual unmarried mother may easily be deserving of sympathy. There is nothing in the rite or the rubrics which necessarily restricts the blessing to married mothers, nor does the above direction of the Holy See clearly exclude unmarried mothers beyond declaring that they have no right to the blessing. Accordingly a few writers seem to imply that the blessing must be refused only in those cases where the illegitimacy of the child is public and notorious. De Herdt, *Sacrae Uturgiae Praxis,* III, n. 287: ". . . ita ut ad hanc admitti nequeant illae, quae notorie ex adulterio aut fornicatione prolem pepererunt". Prümmer, *Theo!. Moralis,* III, §149: ". . . haec benedictio neganda est . . . omnibus matribus, quae pepererunt prolem ex concubitu *manifeste* illegitimo . . ." Payen, *De Matrimonio,* III, i960: ". . . et soli mulieri quae prolem ex legitimo, aut saltem non *perspicue* illegitimo, matrimonio peperit."

(iii) *Local laws* may make more explicit the rule that the blessing must never be given except to married mothers. Previous editions of the *Ordo Administrandi,* which must be used in England, had such a direction at the end of the rite: "Nota bene benedictionem hanc non nisi legitime coniugatis impertiendam esse." But this rubric is omitted in the last edition of the book, printed in 1915, doubtless in order to bring it into line with the *Rituale Romanum,* which contains no rubric of this kind.

We think, therefore, that there is sufficient authority to warrant a priest in giving the blessing to an unmarried mother, provided it is done privately and without the danger of scandal, and provided the practice is not forbidden by local authority.

352.—Churching a Non-Catholic

After baptising the child ofa mixed marriage, the priest is asked to Church the non-Catholic mother. May be do so ?

(i) The older authors, as for example Lacroix, *Theol. Moralis,* III, pars 3, §995, taught that it was unlawful, for reasons of a general character

connected with *communicatio in sacris,* and because excommunicated persons are to be denied these benefits of the Church. We cannot rely on the older authors, in solving a question of this kind, for they were interpreting the law of that period and, moreover, could not be expected to take into account the delicate problems arising out of mixed marriages in a country like England in modern times. The modern manuals do not usually deal explicitly with the point raised: they merely mention, under the subject of Churching, the directions of the Ritual and of the *Congregation of Rites* gathered from the copious Index of the *Decreta Authentica,* which does not happen to include this question. Priimmcr states definitely that the blessing is to be refused.[1]

Canon 1149 gives a general principle from which a solution may be obtained: "Benedictiones, imprimis impertiendae catholicis, dari quoque possunt catechumenis, imo, nisi obstet Ecclesiae prohibito, etiam acatholicis ad obtinendum fidei lumen vel, una cum illo, corporis sanitatem." The "benedictiones" of the canon include the reception of public sacramentals, such as "ashes", "candles" and "palms", but a ruling of the *Congregation of Rites*[2] mentions only catechumens and not non-Catholics in general.

A writer in the *Ecclesiastical Review,* January, 1931, page 39, argues that it is unlawful to give blessings and sacramentals to non-Catholics, in the course of a public function. He relies on an Instruction of the *Holy Office,* 22 June, 1859,[3] which states "Illicitum est ergo in sacris functionibus hereticos in chorum invitare . . . sacros cineres, candelas et palmas benedictas aliaque id genus externi cultus." A reviewer in *Jus Pontificium* dissents from this conclusion.[4] Vermeersch-Creusen, in explaining canon 1149, makes no distinction between public and private reception: non-Catholics may receive blessings, etc., "quatenus natura rei vcl prohibitione speciali non excludantur".[5]

From the Code we learn that "nisi obstet Ecclesiae prohibitio" of canon 1149 certainly excludes from sacramentals *excommunicati vitandi,* and *tolerati* who are under a condemnatory or declaratory sentence;[6] those under a personal interdict;[7] Catholics who have contracted a mixed marriage without a dispensation,[8] and those who are deprived owing to a *poena vindicative!.*[9] The mother in our case does not fall, presumably, under any of these categories.

(ii) The solution we propose is to accept the distinction between "public" and "private" reception of blessings and sacramentals, not precisely for any canonical reason, but because there is some danger of scandal, if it is publicly known that the privileges of the Church may be shared by Catholics and non-Catholics alike. If the blessing after childbirth is to be granted to a non-Catholic, it must be done *remoto scandalo,'* usually it takes place when few people are in the Church. The request for the blessing seems an excellent opportunity for asking why, if the blessings of the Church are required, the woman docs not become a Catholic.

[1] *Theol. Moralis,* III, §149 (a).
[2] 5.R.C., 8 March, 1919.
[3] *Fontes,* n. 952.
[4] «9P. P· *37·
[5] *Epitome,* II, §467.
[6] Canon 2260, §1.
[7] Canon 2275.2.
[8] Canon 1375.
[9] Canon 2291.6

If the possibility of scandal is removed, which is required by divine law, we are left with the laws of the Church; the blessing must, of course, be refused in those dioceses where an episcopal ruling on the point exists. But, if there is no such prohibition, the priest may exercise prudence and discretion, and grant the request or refuse it, as he judges to be expedient. An opinion in favour of giving the blessing is held by the *Ecclesiastical Review,* VII, 1892, p. 146, and by Canon Lalor in *Pastoralia,* 1891, 1892 *passim.* In some cases it might conceivably do more good, and perhaps hasten conversion, if the blessing is refused; in other cases a refusal would do more harm than good. It seems reasonable that, other things being equal, the blessing after childbirth should not be refused to a mother at the altar where she received the grace of the sacrament of marriage, a far more sacred rite. There is really nothing in the blessing itself which requires in the recipient an explicit profession of the Catholic faith, and therefore the non-Catholic is not to be excluded owing to the nature of the rite, "natura rei" as Vermeersch-Creusen puts it.

It is necessary, in addition to removing scandal, to safeguard the possibility of superstition. In particular, it is well to remove any idea in the person's mind that Churching is meant to be a public certificate that the child was born in lawful wedlock; well to remove also the repellent notion that the rite is a purification from the unclcanness of childbirth. It is lamentable how widely spread this idea is, and not only amongst non-Catholics.

353.—Churching a Bad Catholic

Should a priest consent to Church an habitually careless Catholic woman, who neglects her Easter duties, but is apparently of the opinion that the rite will bring her good luck. ? May the blessing be deferred until she has been to confession ?

By the common law of the Church the blessing may be given, unless in any diocese a particular law directs that it is to be refused. The reasons why it may be given are included in the answer to Q. 552: if it may be given to a non-Catholic, it may be given *ceteris paribus* in the above case, for the hardest thing one could say about the woman is that she has ceased to be a Catholic. The blessing may be refused as a *poena vindicativa* (canon 2291.6), but the only authority who can inflict the penalty is a legislative authority, e.g. the Ordinary (canon 2220). May it be refused by applying the principle which requires a priest to refuse the sacraments to public sinners ? We think not; for sacraments arc refused chiefly because of the sacrilege of receiving them in mortal sin, which docs not apply to sacramentals, for they may be given to all sorts of people "nisi obstet ecclesiae prohibitio" (canon 1149).

Hence, the direction of two replies of the *Congregation of 'Rites'.* "Benedictionem mulieris post partum heri debere a parocho si expetitus ipse fuerit"1; "Utrum liceat benedictionem post partum impertiri puerperae, cuius proles mortua fuerit sine Baptismo ? *Resp.* Non esse negandam benedictionem".2 The blessing should not, therefore, be refused, but its meaning should be explained and the possibility of superstition removed;

*N. 381j.
» N. ^904

the priest could use the occasion to persuade the woman to return to her duties. If he judges that refusal would be most salutary, he should first, in our opinion, consult the Ordinary.

354.—Plural Churching

If there are several mothers requiring this blessing may it be given once to all of them collectively?

The Ritual does not provide a plural form for this rite, but it is agreed that the blessing may be given co lectively: Dunne, *The Ritual Explained,* p. 148; Fortescue-O'Connell, *Ceremonies of the Roman Rite,* p. 598; O'Kane-Fallon, *Rubrics of the Roman Ritual,* p. 271. It would be convenient to have a plural form printed, or directions given on the same lines as the current Ritual provides for the administration of plural Extreme Unction, Tit. v, cap. i, n. 22; but the appropriate procedure may easily be deduced from the directions give in other rites.

The forms will have to be changed to the plural, e.g.: "Ingredimini in templum Dei. . . . Salvas fac ancillas tuas". Each one will be provided with a candle, and the ceremony of introducing them into the church with the extremity of the stole will be as directed for the same rite in plural Baptism, Tit. ii, cap. ii, n. 10.

355.—Public Blessings

Is the blessing of statues, crucifixes, etc., for use in church or for public veneration, reserved to the bishop?

Canon 1279, §4: Si imagines, publicae venerationi expositae, sollemniter benedicantur, haec benedictio Ordinario reservatur, qui tamen potest eam cuilibet sacerdoti committere.

This canon is also contained in the *Rituale Romanum,* Tit. viii, capp. xxiv and xxv, which continues, "Privatima utem haec benedictio a quolibet sacerdote fieri potest sine ulla Ordinarii licentia." Another and a longer formula for the solemn blessing of a cross is given, under n. 2 of the blessings reserved to the Ordinary or to his delegate, in the Appendix to the Ritual. The force of "sollemniter" is perceived from the word "privatim", namely it includes *publicity,* a blessing given before a gathering of the faithful, as well as including the solemn ceremonial of incense and holy water, or the use of hymns and prayers in the saint's honour. Canon 1147, §3: "Benedictio reservata quae a presbytero detur sine necessaria licentia, illicita est, sed valida, nisi in reservatione Sedes Apostolica aliud expresserit." This rule applies to the reserved blessings of the Ritual. Those contained in the Pontifical cannot validly be given by a priest without delegation.[1]

[1] *Periodica,* 1927. p. «9 Hébert, *Leçons de Liturgie,* p. 565

356.—Mass in a Hall: Blessing

When Mass is said in a place other than a church or oratory, is a previous blessing of the place necessary? If so, what formula should be used?

Canon 822, §4: Loci Ordinarius aut, si agatur de domo religiosae exemptae, Superior maior, licentiam celebrandi extra ecclesiam et oratorium . . . concedere potest iusta tantum ac rationabili causa, in aliquo extraordinario casu et per modum actus.

Canon 1196, §2: Licet oratoria domestica et semi-publica communi locorum domorumve benedictione aut nulla benedictione donentur, debent tamen esse divino tantum cultui reservata et ab omnibus domesticis usibus libera.

J.R.G, 5 June, 1899, η. 4025.6: Denique Sacra Rituum Congregatio mandat, ut nullum ex oratoriis privatis consecretur, aut Benedictione donetur solemni, quae in Rituali Romano legitur; sed ea tantum formula benedicatur, quae pro Domo nova aut loco in eodem Rituali habetur.

(i) The Ordinary or major superior who gives the requisite permission may also direct that the place used for Mass shall be blessed beforehand, either the first time it is used or each time. Apart from a direction of this kind, which is a precept of the local authority, there is no common law requiring the place to be blessed.

(ii) But it is agreed that a previous blessing is very fitting, and that it can be renewed each time if the place is used for a profane purpose in the interval. The question then is what is the appropriate formula of blessing. Up to the appearance of the current *editio typica* of the Roman Ritual (1925), it is clear from Ô'.R.G, n. 4025.6, cited in the footnotes to canon 1196, §2, that the form to be used is any of the three in the *Rituale Romanum,* Tit. viii, capp. v-vii, preferably that in cap. v, which is the ordinary *Asperges* formula. This solution is the one commonly given by the current writers, e.g. O'Connell, *Celebration of Mass,* I, p. 36, n. 7.

(iii) The new (1925) Ritual contains, however, an alternative in appendix n. 16, entitled "Benedictio oratorii privati seu domestici", taken from a Lyonnese ritual: "Benedictio loci in quo, licentia ab Ordinario data, transitorie seu ad tempus Missa celebranda est." Cf. *Ephemerides Ldturgicae,* 1926, p. 72, where the writer observes, correctly we think, that the appearance of this formula has modified the directions of canon 1196 and *S.R.C.,* n. 4025. Our own preference, therefore, is for the use of the new formula in the circumstances of the above question, but priests may continue to use one of the formulae mentioned in (ii) if they wish to do so.

357.—Blessing of Bells

A tower with bells has been added to a church consecrated some years ago. What is the proper form of blessing to be used for tbe bells? Also, what is the religious symbolism of the weather-cock which is very common on Protestant churches and is often seen on the spires of Catholic churches?

(i) The ancient formula for blessing or "baptizing" church bells is found

in the *Pontificale Pomanurn.* Since 22 January, 1908/ the *RJfuale Rjo/nanum*[1] in addition to a form for blessing bells not destined for churches or oratories, contains a simplified blessing[2] "ad usum ecclesiae benedictae". Accordingly, analogous to the distinction between consecrating and blessing a church, we now have a form for consecrating bells attached to a consecrated church (the ancient one in the Pontifical) and a form for blessing bells attached to a blessed church (the recent one in the Ritual), and the distinction is maintained in canon 1169, §2. Both are reserved to the bishop, who may delegate a priest for the simple blessing or another bishop for the solemn consecration; but, from the concluding rubric of the form in the Ritual, an apostolic induit must be obtained for a priest to consecrate bells with the form in the Pontifical.

In the above case, the proper procedure would have been to have the bells consecrated by a bishop before erection. As this apparently was not done, it is sufficient, in our opinion, for a priest with episcopal delegation to bless the bells *in situ* with the form in the Ritual. This is the solution of J.R.C., 16 July, 1594, n. 52.3: "Non videtur ullo modo decere, ut Episcopus in habitu pontificali ascendat turrim, ut Campanas solemni ritu benedicat; posset temen sacerdos aliquis turrim ascendere, et aqua benedicta Campanas aspergere." But an apostolic induit could no doubt be obtained, if the position of the bells is not too inaccessible, for a priest to consecrate them with the form in the Pontifical. It is not merely what is liturgically becoming, but also, it would appear, a question of possibly breaking one's neck, a danger which is more suitably faced by some priest specially chosen for the purpose by his Ordinary.

(ii) The weather-cock on a church spire is an ancient Catholic symbol, dating from at least the year 820.[3] According to Dom Roulin the symbol may refer to the vigilance which the Church exercises over her children,[4] or it may be taken as an emblem for St. Peter with an obvious warning to sinners. Vigilance seems the most likely explanation, and we give some mediaeval verses printed by Meril[5] which apply the idea to the priest.

Multi sunt prebyteri qui ignorant quare
Super domum Domini gallus solet stare.
Quod propono breviter vobis explanare,
Si vultis benevolas aures mihi dare.

Gallus est mirabilis Dei creatura,
Et rara presbyteri illius est figura
Qui pracest parochiae animarum cura,
Stans pro suis subditis contra nocitura.

Super ecclesiam positus, gallus contra ventum
Caput diligentius erigit extentum.
Sic sacerdos, ubi scit demonis adventum,
Illud se obiiciat pro grege bidentum.

1 Appendix, Bcncd. Rcscrv., I, n. 7
• Roulin, Nex *Eglises,* p. 178.
4 Cf. also *Catbolu Emydopaedia,* II, p. 1
* *Poésies Populaires du Moyen Age,* p. 12

358.—Benedictio Mulieris Praegnantis

Nhiy the blessing, "Rituale Romanum, Appendix, n. 44," *begiven to all expectant mothers, even though no special danger is anticipated?*

(i) Neither the terms of the rite in the Ritual nor the interpretation of the writers, require a special danger. Some hold, with *I'Ami du Clergé,* XLVII, 1930, P· in, that since child-birth is always accompanied by some danger, the blessing may be given in all cases.

(ii) If this view is not accepted, induits arc easily obtained permitting the blessing to be given to all expectant mothers. The petition for one granted in 1928 is as follows:

"N.N. Ordinarius N humiliter exponit quod vigendo nostris diebus tantopere opiniones anticonceptionistae, opportunum necnon necessarium videtur adiuvare et munire uxores catholicas subsidiis spiritualibus ut generoso animo onera matrimonii ferant: ideoque humilis Orator petit ut *Benedictio msdieris pragnatis* quæ in Rituali Romano nonnisi in periculo partus datur, possit impertiri in omni casu prægnationis."

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